91-281

No. _____

In The

Supreme Court of the United States

October Term, 1991

ROBERT M. WILLINGHAM, JR.,

Petitioner,

vs.

STATE OF GEORGIA,

Respondent.

Petition For A Writ Of Certiorari To The Court Of Appeals Of The State Of Georgia

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. WHETHER THE AFFIDAVIT USED TO OBTAIN THE FIRST SEARCH WARRANT CONTAINED FALSE INFORMATION AND KNOWING MISREPRESENTATIONS MADE BY THE OFFICERS SWEARING OUT THE WARRANT SO AS TO NOT FALL UNDER THE PURVIEW OF THE *LEON* GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE.

II. WHETHER EVIDENCE FROM THE SEARCHES FOLLOWING THE INITIAL ILLEGAL SEARCH SHOULD HAVE BEEN EXCLUDED AS FRUITS OF THE POISONOUS TREE IN THAT THEY WERE NOT SUFFICIENTLY UNRELATED WITH THE INITIAL SEARCH SO AS TO DISSIPATE THE TAINT.

III. WHETHER THE TWO INITIAL SEARCHES OF PETITIONER'S HOME WERE GENERAL SEARCHES, AND WHETHER THE SERIES OF FIVE SEARCHES OF THE PETITIONER'S RESIDENCE CONSTITUTED ONE INTERRELATED AND INVASIVE GENERAL SEARCH IN VIOLATION OF THE PETITIONER'S RIGHTS UNDER THE FOURTH AMENDMENT.

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No. _____

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Petitioner Robert M. Willingham, Jr. respectfully requests that this Court grant his Petition for Writ of Certiorari (the "Writ") seeking review of the opinion of the Court of Appeals of Georgia.

OPINIONS BELOW

The holdings of the trial court are found in Petitioner's Appendix at 1-7. The decision of the Court of Appeals on December 5, 1990, is reported as Willingham v. State, 401 S.E.2d 63, 198 Ga. App. 178 (1990), and is set out in Petitioner's Appendix at 8-17. The order of December 20, 1990, denying rehearing of the Petitioner's appeal is located in Petitioner's Appendix at 18. The order of February 1, 1991, granting certiorari to the Supreme

Court of Georgia is located in Petitioner's Appendix at 19, and the subsequent order of May 10, 1991, of the Supreme Court of Georgia stating that certiorari was improvidently granted is set out in Petitioner's Appendix at 20.

JURISDICTIONAL STATEMENT

The Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioner relies on the Fourth Amendment to the United States Constitution (the "Fourth Amendment") in bringing this Writ. The text reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. amend. IV.

STATEMENT OF THE CASE

Petitioner Robert M. Willingham, Jr., requests a Writ of Certiorari to the Court of Appeals of the State of Georgia on the Court of Appeals affirming the trial court's findings.

1. The Facts

The trial court convicted the Petitioner on thirteen counts of theft by conversion based on the fruits of five

separate searches of the Petitioner's residence in Washington, Wilkes County, Georgia.

In 1985, an art dealer, Joseph Rubinfine, received a rare Nathanael Greene letter. Upon contacting an organization familiar with Greene memorabilia, the dealer discovered that the letter belonged to the University of Georgia Library ("Library"). (Transcript, p. 727, l. 2-22) After he returned the letter through the chain of purchase, the Library anonymously received the letter on October 14, 1985, and halted its investigation. (Transcript, p. 713, l. 4-9) The University of Georgia Police Department (U.G.A.P.D.) entered the investigation in July 1986 when the Library informed officers that a map was missing. (Affidavit supporting first search warrant, 12-22-86)

During the course of their investigation of the missing map, officers of the U.G.A.P.D. contacted Graham Arader, an art dealer, who suggested the police should be more interested in an eight volume set of rare books, *The Lilies*. While Arader did not know if the Library owned this work, he cautioned the Library to ascertain whether or not it had a copy of the set. Arader indicated that a Library employee had offered *The Lilies* for sale; in fact, the transaction angered Arader since the purchaser intended to sell for an extremely low price and undercut Arader's prices. After speaking with Arader, the Library determined that its copy of *The Lilies* was missing. (Transcript, p. 1025, l. 1-25; affidavit supporting first warrant, 12-22-86)

The U.G.A.P.D. centered its investigation on the Petitioner, a former employee of the special collections department of the Library, concerning the thefts of the Greene letter and *The Lilies*. (Transcript, p. 1266, l. 17-22) Despite an officer's contention that a "trail of items" was

missing from special collections, later testimony indicates that this department never had a complete inventory of its holdings, making it impossible to ascertain what items were missing. (Transcript, p. 2286, l. 11-23)

Since the Petitioner's residence was not in Clarke County, Officers Jones and Horton of the U.G.A.P.D. secured a first search warrant from a Superior Court judge for Wilkes County. The affidavit failed to identify the Petitioner as a former Library employee, attached a four page list of articles that the library had "discovered missing," and made no attempt to vouch for the art dealer's credibility as an informant. (Mot. to Suppress Hearing, 11-3-87, p. 94, l. 1-6; Transcript, p. 1046, l. 4-24; p. 1047, l. 1-7; Mot. to Suppress Hearing, 11-3-87, p. 96, l. 5-21)

When Jones, Horton, other officers, and a library employee (Brooks) executed this warrant on December 22, 1986, none of the items described in the warrant were found in the Petitioner's residence. (Transcript, p. 1049, l. 16-25) Brooks, however, examined the contents of the house and identified items that she felt there was a "good possibility" of University ownership. (Motion to Suppress Hearing, 11-20-87, p. 150, l. 7-19) Four such items were seized, and Jones took between twenty-four and thirty-six photographs of the interior of the Petitioner's residence. (Transcript, p. 2278, l. 11-24) Because the things seized were not specified in the search warrant and the officers had no probable cause to believe that they were stolen property, the trial court barred the introduction of the items into testimony or evidence. (Order on Motion to Suppress, 7-30-88)

The observations from the first search were the bases for the affidavit for a second search warrant for the Petitioner's home on February 2, 1987. (Transcript, p. 1044, l. 1-8; p. 1267, l. 8-15; p. 1441, l. 7-10) Officer Jones described the role of the first search in seeking the second warrant as follows:

> The purpose of the [first] search warrant was to hopefully locate property belonging to the University of Georgia Library . . . Many maps and prints were seen by investigators but were not taken during the search because it was not known if these items were missing . . . In particular a 1757 DeBrahm's map of Georgia and South Carolina was seen, an Eleazer Early map of the state of Georgia, and an Abbot's print entitled "Chestnut Butterfly" were seen by investigators but were not taken. (Affidavit supporting second search warrant, 2-2-87, prepared by Mitchell Jones)

The second warrant sought the two maps and the butterfly print. Although the officers found the maps in five minutes, the search continued for five hours. (Transcript, p. 1815, l. 14-22) Horton, Jones' commanding officer, ordered Jones to photograph everything in the house whether or not he found the items immediately. (Transcript, p. 2285, l. 14-25; p. 2286, l. 1-7) As a result, Jones took 257 photographs of maps, prints, and pictures hanging on the walls, items on bookshelves, and contents of drawers. (Transcript, p. 1269, l. 9-16; p. 1763, l. 4-20) The judge who issued the warrant was never informed about plans to extensively photograph the Petitioner's home. (Motion to Suppress Hearing, 11-20-87, p. 141, l. 15-19)

Since no complete inventory had been performed in the special collections department of the Library, these photographs were taken so that library personnel could examine the pictures to determine whether or not these

items were missing from the Library. (Transcript, p. 1822, l. 5-18) After library personnel compared these photographs to negatives, microfilm, library cards and personal recollections, a consent search (February 3, 1987) and two additional warranted searches (February 17, 1987 and March 30, 1987) ensued. (Transcript, p. 1274, l. 7-24; p. 1275, l. 14-24; p. 1281, l. 10-23; p. 1282, l. 7-15; p. 1492, l. 22-23; p. 1493, l. 24-25; p. 1494, l. 1-5; p. 1822, l. 5-18.)

2. The proceedings below

The jury convicted the Petitioner on thirteen counts of theft by conversion, and the trial court denied a new trial. The Court of Appeals of Georgia sustained the conviction, stating that "all searches were conducted in full compliance with applicable constitutional and statutory requirements." (Petitioner's Appendix at 8.) That court denied rehearing. The Supreme Court, after granting a writ of certiorari, vacated its grant as improvident on May 10, 1991. (Petitioner's Appendix at 20.)

The Petitioner raised concerns invoking the Fourth Amendment to the United States Constitution throughout the state proceedings.

The Petitioner raised the issue in his Motion to Suppress on October 19, 1987, with the result that only the fruits of the first search were suppressed. The issue was again raised at trial on September 1, 1988, as an objection to State's Exhibit No. 83 of 303 pictures of the Petitioner's home (Transcript, p. 1766, l. 13-25; p. 1768, l. 1-17). The trial court overruled the objection. Additionally, Petitioner objected on Fourth Amendment grounds to the introduction of items obtained during the search at trial on September 1, 1988. The Court overruled his objection. (Transcript, p. 1778, l. 5-15) Petitioner's Motion for

Directed Verdict, also resting on Fourth Amendment grounds, was overruled during the course of the trial on September 7, 1988. (Transcript, p. 2295). During the trial (September 7, 1988), Petitioner made a Motion to Suppress based on Fourth Amendment grounds, but the Court did not grant it. (Transcript, pp. 2299-2300).

The Petitioner continued to raise the Fourth Amendment issue throughout the appeals process. In the Brief for Appellant to the Court of Appeals of Georgia, filed March 26, 1990, the Petitioner argued under the Fourth Amendment, but the Court of Appeals affirmed the trial court. The Motion for Rehearing relied on the Fourth Amendment, but the Court of Appeals denied the motion. Finally, in the Petition for Writ of Certiorari and Brief of Petitioner in Support filed January 9, 1991, the Petitioner again raised the constitutional issues with the Georgia Supreme Court. While this Court originally granted certiorari, it later found that certiorari was improvidently granted.

SUMMARY OF THE ARGUMENT

"The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land." *Weeks v. United States*, 232 U.S. 383, 393 (1914).

This Court has the opportunity to reaffirm the embodiment within the United States Constitution of the right to be free from unreasonable searches and seizures.

The exclusionary rule furthers this freedom by prohibiting introduction into evidence of materials seized during an unlawful search. *Murray v. United States*, 487 U.S. 533 (1988). *See also Weeks v. United States*, 232 U.S. 383 (1914). Although it is not a part of the Fourth Amendment, its deterrent effect exists to ensure that future searches and seizures comply with constitutional mandates. *United States v. Calandra*, 414 U.S. 338 (1974). As such, this Court must vigorously protect the rights of citizens by boldly enforcing the exclusionary rule, and must reexamine the exceptions to this rule that currently sap it of all vitality.

The exclusionary rule does not benefit the individual criminal defendant; rather, it inures solely to the good of society. *United States v. Leon*, 468 U.S. 897, *reh'g denied*, 468 U.S. 1250 (1984). In order to serve the overriding social interest, courts must weigh the detrimental consequences of illegal police action in terms of the cost of applying the exclusionary rule. *Id.* at 911. However, "suppression is appropriate [where] the officers were dishonest or reckless in preparing their affidavit . . . " *Id.* at 926.

In the matter before this Court, officers of the U.G.A.P.D. exhibited the type of behavior specifically excluded from the *Leon* good faith exception in preparing the initial affidavit. They informed the judge that the attached four page list represented an inventory of missing library items, when in fact no inventory had been performed. Additionally, officers failed to identify sources of information and the credibility of their informants in the affidavit supporting the first search. They also omitted the fact that the Petitioner had been employed in the special collections division of the Library, precluding the judge from considering this factor in his probable cause determination. Finally, the information used in the

probable cause determination was fatally stale, making it impossible to support a reasonable belief that the items sought would be located on the premises.

Although not specifically relying upon *Leon*, the trial court properly suppressed evidence garnered from the first search, finding that the officers did not specify the property to be seized and that they had no probable cause to believe that the items seized were stolen property. However, this suppression was insufficient since all subsequent searches flowed directly from the first.

Throughout the trial, witnesses testified that the information from the first search served as the grounds for the second search (Transcript, p. 1044, l. 1-8; p. 1267, l. 8-15; p. 1441, l. 7-10), that information from the second search served as the basis for the consent search (Transcript, p. 1274, l. 7-24; p. 1771, l. 13-25), that regular visits from the first, second, and consent search formed the grounds for the third search (Transcript, p. 1780, l. 17-25), and that further items in the indictment were identified only by comparing photographs from the first and second searches to the library's negatives, library cards, microfilm, and employee's recollections (Transcript, p. 1493, l. 24-25; p. 1494, l. 1-5; p. 1274, l. 7-24). Since all evidence seized may be traced directly to the initial search, all subsequent seizures must be excluded as fruits of the poisonous tree.

As fruits of the poisonous tree, this evidence may be admitted if the connection with the unlawful search is "so attenuated as to dissipate the taint." *Murray v. United States*, 487 U.S. 533, 537 (1988), citing *Nardone v. United States*, 308 U.S. 338 (1939). Given the direct link between the first, illegal search and all subsequent searches, the taint has not been dissipated. Additionally, the State of

Georgia did not and could not prove a sufficiently tenuous connection to support admissibility.

The independent source and inevitable discovery doctrines have arisen as means to prove the requisite attenuation. Evidence acquired from an independent source is untainted evidence identical to that unlawfully acquired. *Murray*, 487 U.S. at 538. An independent source does not exist where a decision to seek a subsequent warrant is prompted solely by the initial illegal search or if information from the illegal search was presented to the judge issuing the warrant and affected his determination. *Id.* at 542. In the matter before this Court, an independent source of information concerning property missing from the Library did not exist: no inventory had been performed, making it impossible to determine the exact contents of the special collections division. Additionally, all subsequent searches were prompted solely by the initial illegal search in that information, photographs, and impressions of a library employee garnered on the first search served as the sole basis for the later searches.

Since tainted evidence would be admissible if discovered through an independent source, the inevitable discovery doctrine provides that evidence which would have been inevitably discovered is admissible. *Nix v. Williams*, 467 U.S. 431 (1984), *cert. denied* 471 U.S. 1138 (1985). A case interpreting *Nix* requires that lawful means be pursued prior to the illegal action in order to rely on the inevitable discovery doctrine. *U.S. v. Satterfield*, 743 F.2d 827 (11th Cir. 1984), *cert. denied* 471 U.S. 1117 (1985). In this case, there were no assurances that the same information would have been inevitably discovered or

that police began the investigation prior to the initial illegality: The inventory process was still incomplete at the time of trial.

Instead of ascertaining exactly what was missing from the Library, officers of the U.G.A.P.D. set out upon a wide-ranging exploratory search that the Framers of the Fourth Amendment intended to prohibit. The purpose of the first search was to "hopefully locate [University] property." The second search became a general search by virtue of the duration, the photographs constituting unreasonable seizures, the lack of protection of the plain view doctrine, and the warrant's lack of particularity. Since these searches led to frequent, interdependent searches, all five searches must be considered as a general search violative of the Fourth Amendment.

REASONS FOR GRANTING THE WRIT

I. POLICE OFFICERS ACTED DISHONESTLY AND RECKLESSLY IN OBTAINING THE FIRST SEARCH WARRANT; THEREFORE, THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE DOES NOT APPLY.

The Court in *United States v. Leon*, 468 U.S. 897, 905, *reh'g denied* 468 U.S. 1250 (1984), formulated an exception to the exclusionary rule for "evidence seized in reasonable, good-faith reliance on a search warrant that is subsequently held to be defective." In recognizing that admission of such evidence was only warranted where law enforcement officials acted in good faith, the Court held that the exclusionary rule still applied in cases where the officers were dishonest or reckless in preparing

the affidavit, could not have had an objectively reasonable belief as to the existence of probable cause, or supported the application with only a "bare bones" affidavit. *Id.* at 926. In these instances, suppression would be appropriate as a deterrent to future police misconduct. *Id.* at 911.

The situation at bar presents an opportunity to deter future misconduct by holding these *Leon* principles applicable to the first search. A clear pronouncement on the *Leon* doctrine is warranted since U.G.A.P.D. officers exhibited the three types of behavior specifically exempted from the good faith exception in drafting the affidavit used to acquire the first warrant.

A. The officers misrepresented material facts and omitted information vital to the determination of probable cause to the issuing judge in obtaining the first warrant.

The *Leon* good faith exception to the exclusionary rule is not applicable to the activities of the officers in obtaining the first search warrant since the officers misrepresented that an inventory of the Library had been done, the officers failed to identify sources of information and credibility of informants, and the officers omitted a fact material to the judge's determination of probable cause.

The officers misrepresented to the issuing judge that the four-page list attached to the affidavit represented an inventory of items missing from the library. In fact, no inventory had been performed in the special collections department, making it impossible to list any items missing. The following testimony indicates that the officer

seeking the warrant knew that the four-page list falsely represented missing items:

> Q. Mr. Horton [the U.G.A.P.D. officer in charge], at the time that you participated in obtaining these search warrants for Mr. Willingham's home you knew that there had not been a complete inventory done of the items that were kept there in special collections in the library, did you not?
>
> A. That is true.
>
> Q. So you knew at that time that they couldn't be certain as to what was missing and what was not missing; isn't that true?
>
> A. That is true.
>
> (Transcript, p. 2286, l. 11-20)

By leading the judge to believe that the Library was missing certain specific items, the officers misled him in his determination of the existence of probable cause.

Additionally, the affidavit supporting the first warrant fails to identify sources of information and fails to support the credibility of sources identified. Officer Jones (the affiant) refers repeatedly to interviews with Library employees and to information given to him by the Library. However, he never identifies the employees interviewed or the persons from whom he received information.

Although Jones identifies several sources, he fails to support their credibility. The informant's credibility is judged by a "totality of the circumstances" approach that balances reliability and basis of knowledge, permitting one to compensate for a deficiency in the other. *Illinois v. Gates*, 462 U.S. 213 (1983). For example, Jones relied on information from Arader, an art dealer. Despite the fact that Arader informed the officer that he kept "poor records," Jones never establishes Arader's reliability and

knowledge. Similarly, Jones made no showing of credibility for Abrams, another art dealer, although the affidavit specifically indicates that Abrams lied to officers during the investigation. (Affidavit supporting first warrant, 12-22-86)

Another misrepresentation occurred when the officers acted dishonestly and recklessly in preparing the initial affidavit, which misled the judge in issuing the first warrant. Whether the Petitioner had access to the special collections department of the Library was essential to the determination of probable cause. Although the Petitioner was a former employee of this department, the search warrant omits this fact. Furthermore, the officer did not specifically inform the judge of the Petitioner's employment. (Mot. to Suppress Hearing, 11-3-87, p. 94, l. 1-6)

B. The officers lacked an objectively reasonable belief as to the existence of probable cause.

Due to the staleness of the information upon which the first affidavit is based, the officers could not have had an objectively reasonable belief as to the existence of probable cause.

When asked why the first search had been performed, an officer of the U.G.A.P.D. replied as follows:

> Well, based on the information we had that Mr. Willingham had sold the Lilies to Dr. Alligood, and that he sold the Nathanael Greene letter, and Mr. Rubinfine had ended up with that. That was [sic.] two of the strong reasons we felt that some of the library property may be in his house. (Transcript, p. 1266, l. 17-22)

This information was insufficient to support a finding of probable cause since these sources were stale.

Investigation into the disappearance of *The Lilies*, a multi-volume set, revealed that it had been missing since early 1984, at least two and one-half years before the series of searches of the Petitioner's home began on December 17, 1986. (Transcript, p. 1030, l. 8; p. 1042, l. 3-24) Similarly, the investigation of the Nathanael Greene letter ended on October 14, 1985, when the letter was anonymously returned. (Transcript, p. 713, l. 4-9; affidavit supporting first warrant, 12-22-86)

Stale information, indicating that the items sought will be found in the place to be searched, cannot be the basis of a probable cause determination. *United States v. Snow*, 919 F.2d 1458 (10th Cir. 1990). Whether information is stale depends upon the particular facts of a case. *Andresen v. Maryland*, 427 U.S. 463 (1975). For example, the Court in *Andresen* found that a three month delay between the completion of the transactions upon which the warrant was based and the ensuing searches was not unreasonable. *Id.* at 478, n. 9. Under the particular facts in that case, the business records sought by investigators were kept in the ordinary course of business, making it reasonable to expect these would be kept for a three month period of time. *Id.* at 479, n. 9.

In contrast, this case involved allegedly stolen materials. Investigators had no reason to believe that these items would be located at the Petitioner's house since theft generally does not involve an extended holding of the goods. While probable cause was based upon the Nathanael Greene letter and *The Lilies*, these events occurred at least one year before the searches began, and at the time of the searches the materials had been recovered or located.

Though the affidavit describes the investigation into and discovery of the Greene letter and *The Lilies*, it fails utterly to describe any fact or circumstance which would lead one to believe that any of the items contained in the four page "inventory" list would be found in petitioner's home.

C. Officers relied upon a bare bones affidavit to obtain a warrant.

Finally, suppression is appropriate under *Leon* where officers rely only upon a bare bones affidavit to obtain a warrant. Although the affidavit with a four-page list attached does not seem to be bare bones at first glance, examination of the contents indicate that it is the evil that *Leon* intends to prohibit. As mentioned before, the affidavit contained knowing misrepresentations that misled the issuing judge, failed to support the informant's credibility, and based probable cause on stale information. The four-page list of "items missing" from the library was completely inaccurate in that no inventory of the special collections division had been performed; thus, it added no information upon which the issuing judge could base a probable cause determination.

The trial court correctly suppressed all seizures from the first search due to lack of particularity and the lack of probable cause. Under *Leon*, the initial search of the Petitioner's home did not fall within the good faith exception to the exclusionary rule. As such, the taint of the illegal police action was not sufficiently dissipated as to permit admission. Similarly, the taint of the illegal police action of the first search was not sufficiently dissipated from all subsequent searches to permit introduction of that evidence.

II. ALL SUBSEQUENT SEARCHES RELIED SOLELY ON INFORMATION GATHERED FROM THE FIRST ILLEGAL SEARCH; THUS, EVIDENCE OBTAINED IN SUBSEQUENT SEARCHES SHOULD HAVE BEEN EXCLUDED AS FRUIT OF THE POISONOUS TREE.

A recent case explains the fruit of the poisonous tree doctrine:

> The exclusionary rule also prohibits the introduction of derivative evidence, both tangible and testimonial, that is the product of the primary evidence, or that is otherwise acquired as an indirect result of the unlawful search, up to the point at which the connection with the unlawful search becomes "so attenuated as to dissipate the taint." [cits. omitted] *Murray v. United States*, 487 U.S. 533, 537 (1988).

Murray identifies two separate means to show dissipation of the taint: the independent source doctrine and the inevitable discovery doctrine. *Id.* at 539. *See also Nix v. Williams*, 467 U.S. 431 (1984), *cert. denied* 471 U.S. 1138 (1985). In the present matter, the State of Georgia never claimed that seizures following the initial search were not fruits of the poisonous tree.

A. The illegal search served as the basis for all others.

1. The second search was a direct result of the first.

Testimony indicates that the initial illegal search served as the basis for the second search. A U.G.A.P.D. officer explained the grounds for the second search as follows:

> During the . . . execution of the first search warrant, we noticed two particular maps – the DeBrahm's map and the Eleazer Early map and

> a print of a butterfly. And on our arrival back to the University we discovered that the University Library were [sic.] missing a particular DeBrahm's map and a particular Eleazer Early map. (R., p. 1267, l. 8-15)

On the second search, the items sought were the two maps and the print. Additional testimony indicates that "Upon looking at the items in the house [during the first search] we later determined that there was probable cause to believe that a couple of the items belonged to the University . . . from that information we obtained a second search warrant . . . " (Transcript, p. 1044, l. 1-8) Since officers would not have embarked on this second search but for their discoveries during the initial illegal search, seizures from the second search must be excluded as fruits of the poisonous tree.

2. Remaining searches were directly or indirectly based on the first.

The facts indicate the two remaining warranted searches and one consent search had their basis in the findings of the first search. Testimony indicates that the consent search was undertaken solely because the U.G.A.P.D. had compared a photograph from the first search with information from the Library, and found a map to be seized. (Transcript, p. 1771, l. 13-25)

The remaining two searches were indirectly based upon the first. For example, an officer of the U.G.A.P.D. testified concerning the third warranted search:

> We had already been in Mr. Willingham's house three times . . . We made regular visits, and we knew what was in the house. And based upon that information we had from the library we obtained a third search warrant. (Transcript, p. 1780, l. 17-25)

The fourth search was indirectly based on the first in that the officers relied on previous visits and information from the Library, and "knew some of the items that were there." (Transcript, p. 1783, l. 13-23)

Extensive testimony indicates that certain items seized during the third and fourth searches were identified only by comparing photographs from the first and second searches to the Library's negatives, microfilm, library cards, and employee's recollections. (Transcript, p. 1493, l. 24-25; p. 1494, l. 1-5; p. 1274, l. 7-24; p. 1275, l. 14-24; p. 1281, l. 10-23; p. 1282, l. 7-15; p. 1492, l. 22-23; p. 1494, l. 1-5; p. 1822, l. 5-18)

Since the evidence unflinchingly supports direct or indirect causation flowing from the illegal search to all searches following it, evidence from the remaining searches was admissible only if the taint of illegality was sufficiently dissipated. The State never attempted to dissipate the taint; in fact, it never claimed that seizures following the first search were not fruits of the poisonous tree. Because the State did not rely on the independent source doctrine, inevitable discovery doctrine, or any other showing of the requisite attenuation, evidence seized from subsequent searches should have been suppressed.

B. The State did not and could not show that the illegally gathered evidence came from an independent source.

The independent source doctrine refers to evidence acquired from an untainted source which is identical to the evidence acquired as a result of illegal activity. *Murray v. United States*, 487 U.S. 533 (1988). Since facts illegally obtained are not "sacred and inaccessible," this

doctrine permits admission of items into evidence where knowledge of them is gained through an independent source. *Silverthorne Lumber Co., Inc. v. U.S.*, 251 U.S. 385, 392 (1920).

Murray involved a situation where federal agents entered a warehouse without a warrant and discovered bales of marijuana. They left without disturbing anything, and later returned with a search warrant. In remanding the case to determine whether an independent source of information existed, Justice Scalia gave an example of what is *not* an independent source: An independent source would not have existed if

> The agents' decision to seek the warrant was prompted by what they had seen during the initial [illegal] entry, or if information obtained during that [illegal] entry was presented to the Magistrate and affected his decision to issue the warrant. *Murray*, 487 U.S. at 542.

Under this illustration, an independent source did not exist in the present matter since the decision by the officers of the U.G.A.P.D. to seek additional warrants was "prompted by what they had seen during the initial [illegal] entry, [and the] information obtained during that [illegal] entry was presented to the [Judge] and affected his decision to issue the warrant." *Id.* Since the initial illegal search of the Petitioner's residence, analogous to the illegal entry in *Murray*, formed the sole basis of information to support four additional searches, the prosecution must demonstrate the existence of an independent source to justify the subsequent searches.

The State never proved that an independent source existed, and any attempts to do so would have been unsuccessful. No inventory of the special collections department of the Library had been performed, making it

impossible to ascertain from an untainted source what was missing. (Transcript, p. 2286, l. 11-23)

C. The State made no showing that the evidence would have been inevitably discovered.

The inevitable discovery doctrine is an extrapolation from the independent source doctrine, and provides that "Since the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered." *Murray*, 487 U.S. at 539. *See also Nix v. Williams*, 467 U.S. 431 (1984), *cert. denied* 471 U.S. 1138 (1985). *Nix* involved statements concerning location of a victim's body obtained from a suspected murderer in violation of the murderer's rights. At the time that these statements were made, an extensive search for the victim's body was being conducted by a large volunteer group. After the confession, the search was called off. In admitting the confession, the Court relied upon detailed testimony that the body would have inevitably been discovered in the course of the methodical and extensive search. *Nix*, 467 U.S. at 448-450.

To permit introduction of tainted items into evidence, the prosecution must establish by a preponderance of the evidence that the evidence ultimately would have been discovered by lawful means. *Id.* at 444. This showing relies upon "no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment." *Id.* at 445, n. 5.

Using the *Nix* decision, the Eleventh Circuit formulated the following rule for the propriety of admissibility:

> There must be a reasonable probability that the evidence in question would have been discovered by lawful means, and the prosecution must

> demonstrate that the lawful means which made discovery inevitable were possessed by the police and were being actively pursued *prior* to the occurrence of the illegal conduct . . . the Government cannot later initiate a lawful avenue of obtaining the evidence and then claim that it should be admitted because its discovery was inevitable. *United States v. Satterfield*, 743 F.2d 827, 846 (11th Cir. 1984), *cert. denied* 471 U.S. 1117 (1985)

The prosecution in this matter made no showing of "demonstrated historical facts" that would support a reasonable probability that the evidence would have been discovered. The Library's discovery of missing items occurred only after the Library compared pictures taken during the first and second searches with its negatives, microfilm, and employees' recollections. Active pursuit of these items had not been initiated prior to the illegal search; instead, the illegal searches served as a means to determine what was missing, not as a way to seize specific evidence of a crime. Without the products of the illegal searches, the Library would never have discovered what was missing.

D. Placing police in the same position as if no misconduct occurred requires exclusion of all evidence.

As with other Fourth Amendment concerns, the purpose of these doctrines is to deter unlawful police conduct, not compensate individual harms. Courts should balance societal interests against the deterrent effect of excluding evidence upon police, and ultimately place police in the same, not a worse, position that they would have been in if no misconduct occurred. *Murray*, 487 U.S. at 537.

In the present matter, placing the law enforcement officials in the same position that they would have been in had no misconduct occurred would entail suppression of all evidence seized in the Petitioner's home. While the police would certainly be better off if all evidence were admitted, the purpose of the independent source doctrine is to put the police in the *same* position had no misconduct occurred. *See Murray*, 487 U.S. at 542. *See also United States v. Silvestri*, 787 F.2d 736, 740 (1st Cir. 1986), *cert. denied* 487 U.S. 1233 (1988) (" . . . when the police are placed in a better position because of their misconduct, the deterrence rationale requires that the advantage be wiped out through suppression.")

If no misconduct had occurred, none of the evidence would have been discovered through an untainted source. Thus, all evidence must be suppressed since the police in this matter did not and could not demonstrate the availability of an untainted source to compensate for the information that was gained during the first illegal search.

III. THE INITIAL TWO SEARCHES WERE GENERAL SEARCHES, AND THE FIVE INTERRELATED AND INVASIVE SEARCHES CONSTITUTED A SINGLE GENERAL SEARCH.

The warrant requirement of the Fourth Amendment assures that necessary searches are as limited as possible; the framers intended to prohibit general warrants permitting a "general exploratory rummaging in a person's belongings." *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). The prohibited acts – an unlimited search and a rummaging in a person's belongings – occurred during

the one consent and four warranted searches of the Petitioner's home. Specifically, the first search and second search were each general searches, and the series of searches themselves constituted a general search.

A. The first search was a general search.

All seizures resulted from an initial general search. In the affidavit used to procure the second warrant, the U.G.A.P.D. officer stated the following:

> The purpose of the [first] search warrant was to hopefully locate property belonging to the University of Georgia Library . . . Many maps and prints were seen by investigators but were not taken during the search because it was not known if these items were missing from the University of Georgia Library.

From this beginning of rummaging through the Petitioner's home to "hopefully" locate Library property, the officers continued to return in order to seize items that they only recently "discovered" missing. Although Officer Horton described this ongoing, invasive process as giving the Petitioner the "benefit of the doubt," (Mot. to Suppress Hearing, 11-3-87, p. 154, l. 12-21), the framers of the Constitution would undoubtably describe it as using an illegal search to prompt the modern-day equivalent of a witch hunt.

B. The second search was a general search.

1. Police conducted a "general exploratory rummaging" through the contents of the Petitioner's home.

The duration and activities of the second search reflect the much abhorred "general exploratory rummaging in [the Petitioner's] belongings": Although the police

seized two of the three items listed on the warrant in five minutes, the search continued for an additional five hours. The officer in charge of the investigation specifically instructed his subordinates to photograph every item in the Petitioner's home regardless of whether they immediately found the three items listed on the warrant. (Transcript, p. 2285, l. 14-25; p. 2286, l. 1-7) As a result, the officers executing the warrant took approximately eleven rolls of twenty-four exposure film, making photographs of the walls, bookshelves, and contents of drawers. (Transcript, p. 1458, l. 10-24; p. 1763, l. 4-20)

Conducting the search in this manner is similar to the situation presented in *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319 (1978). Under the auspices of searching for two "sample films," investigators spent six hours in an adult bookstore conducting a more extensive search based upon what a local justice participating in the search deemed illegal. *Id.* at 326. A unanimous Court described the investigators' activities as "reminiscent of the general warrant . . . against which the Fourth Amendment was intended to protect." *Id.* at 325. In the present matter, investigators spent five hours in the Petitioner's home under the auspices of searching for a single print, when in fact they were conducting a more extensive search by photographing items that they hoped to be University property. Thus, investigators expanded their initial lawful authority into an impermissible general search.

2. Extensively photographing the Petitioner's home constituted an unreasonable seizure.

Several circuit cases indicate that the 257 photographs taken by the U.G.A.P.D. of the Petitioner's home composed an unreasonable seizure.

In *United States v. Espinoza*, 641 F.2d 153 (4th Cir. 1981), *cert. denied* 454 U.S. 841 (1981), federal agents took pictures of a warehouse distributing pornographic materials in order to demonstrate to the Court that the warehouse was a commercial enterprise. Relying on the agent's power to seize visual images under the plain view doctrine, the Court upheld the agent's act as a means of "preserv[ing] the appearance of the interior." *Id.* at 166, 167. *See also United States v. Butler*, 793 F.2d 951, 953-954 (8th Cir. 1986)(The Court upheld seizures of photographs of the defendant's residence for their use as "visual depiction[s] of the place where grenade components were found.")

The 257 photographs taken of the Petitioner's walls, bookshelves, and drawers went far beyond visual depictions to "preserve the appearance of the interior." The sole purpose of the photographs was to permit Library employees to compare the images with their recollections, negatives, and microfilm. Since the Library used the photographs to discover "missing" items, their use to show officers the location of items came only peripherally.

The present situation is analogous to *United States v. Johnson*, 452 F.2d 1363 (D.C. Cir. 1971), *cert. denied* 415 U.S. 923 (1974), where the Court held that photographs taken of a detainee prior to police having probable cause for his arrest possibly violated the Fourth Amendment where the photographs were used to secure probable cause for arrest. Similarly, a Fourth Amendment violation occurred in the present matter since police used the photographs to manufacture evidence against the Petitioner to support a determination of probable cause for future searches.

The same conclusion of unreasonable seizure results upon consideration of *Segura v. United States*, 468 U.S. 796

(1984). The *Segura* petitioners argued that a seizure occurred when agents entered and remained on their premises to secure the contents while the petitioners were in police custody. *Id.* at 805. While not deciding specifically whether a seizure had occurred, the Court assumed a seizure and found that it was not unreasonable under the totality of the circumstances. *Id.* at 806. Any seizure that occurred was reasonable because no information contained in the subsequent warrant derived from the initial entry onto the petitioners' premises. *Id.* at 810.

The present matter demands a different result since the seizure that occurred was unreasonable under the totality of the circumstances. The possible seizure that occurred in *Segura* secured the premises from being emptied by allies of the petitioners. In contrast, the 257 photographs taken by the U.G.A.P.D. seized incriminating evidence to be used against the Petitioner. The *Segura* seizure did not afford information to be used on a subsequent search warrant, while the seizure in the present matter was the sole source of information for the third and fourth warrants and the consent search. In light of these differences, the photographs taken of the Petitioner's home constituted an unreasonable seizure.

3. The 257 photographs taken of the Petitioner's home by the police during the second search are not protected under the plain view doctrine.

Alternatively, extensively photographing the Petitioner's home is akin to seizing evidence in plain view of the law enforcement officers: Incriminating evidence is captured without the formality of a warrant. The photographs in question constituted incriminating evidence

since their sole use was to determine what the Library was missing from its special collections division. In the words of the supervising officer, the purpose of the photographs was "[t]o see if there was any possibility that what he had might belong to the University of Georgia." (Transcript, p. 1280, l. 21-24) Extensive testimony indicates that the photographs served as a means for the Library to identify property by comparing the photographs with negatives, microfilm, library cards, and employees' recollections. (Transcript, p. 1274, l. 7-24; p. 1275, l. 14-24; p. 1281, l. 10-23; p. 1282, l. 7-15; p. 1492, l. 22-23; p. 1493, l. 24-25; p. 1494, l. 1-5; p. 1822, l. 5-18.)

The plain view doctrine permits unwarranted seizures of incriminating evidence under certain circumstances. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). *See also Horton v. California*, ___ U.S. ___, 110 S. Ct. 2301 (1990)(removing the inadvertence requirement for plain view seizures). However, it does not cover the activities of the U.G.A.P.D. in this instance since this doctrine "may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges." *Coolidge*, 403 U.S. at 465-466. Spending five hours to photograph the entire contents of the Petitioner's home under the guise that one item remained to be seized constitutes an exploratory search not under the protection of the plain view doctrine.

4. Photographs taken during the second search constituted an unreasonable seizure since they were not particularly described in the affidavit supporting the warrant.

The Fourth Amendment requires a warrant to "particularly describ[e] the place to be searched, and the

persons or things to be seized." U.S. Const. amend. IV. The purpose of this requirement is as follows:

> By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit. *Maryland v. Garrison*, 480 U.S. 79, 84 (1987).

In the present matter, officers of the U.G.A.P.D. completely abandoned the particularity requirement in that they never informed the judge issuing the second warrant of their intent to photograph the Petitioner's home. (Mot. to Suppress Hearing, 11-20-87, p. 141, l. 15-19) In failing to do so, the officers were solely left to their discretion as to how to conduct the search and as to what to seize, in contravention of constitutional law. *See, e.g., Marron v. United States*, 275 U.S. 192 (1927).

C. The series of searches constituted a general search.

The frequency and interdependence of the five searches indicate that the searches were not as limited as possible. The first search warrant was executed on December 22, 1986, the second was executed on February 2, 1987, the consent search was performed on February 3, 1987, the third search warrant was executed on February 17, 1987, and the final search was held on March 30, 1987. During this three month span, police searched the Petitioner's home five times. In fact, Officer Jones of the U.G.A.P.D. cavalierly testified as to his familiarity with the Petitioner's residence: "We made regular visits, and we knew what was in the house." (Transcript, p. 1780, l. 17-25)

The close relationship between the five searches demonstrates that they constitute a single general search. The officers did not make out a case against the Petitioner and then embark on a search and seizure to discover specific evidence of crime; instead, the officers embarked on the five searches and seizures to discover any item upon which a case could then be made against Petitioner.

IV. CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that the Petition for A Writ of Certiorari be granted.

DATED this ___ day of ___, 1991.

Respectfully submitted,

ERNEST DE PASCALE, JR.
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P.O. Box 1744
Athens, Georgia 30613
(404) 548-1151

Counsel of Record for Petitioner

APPENDIX

IN THE SUPERIOR COURT OF CLARKE COUNTY, GEORGIA

FINAL DISPOSITION

State of Georgia

vs

Robert M. Willingham

CRIMINAL ACTION NO. SU-87-CR-0992

OFFENSE(S) CT. II-XII & XIV Theft by Conversion

July TERM, 1988

[ ] PLEA:

[ ] NEGOTIATED

[ ] GUILTY ON COUNTS(S) ___

[ ] NOLO CONTENDERE ON COUNTS(S) ___

[ ] TO LESSER INCLUDED OFFENSE(S) ___

ON COUNT(S) ___

[X] JURY

[ ] NON-JURY

[X] VERDICT:

[X] GUILTY ON COUNT(S) I-XII & XIV

[ ] NOT GUILTY ON COUNT(S) ___

[ ] GUILTY OF INCLUDED OFFENSE(S) OF ___

ON COUNT(S) ___

[ ] OTHER DISPOSITION

[ ] NOLLE PROSEQUI ORDER ON COUNT(S)___

[ ] DEAD DOCKET ORDER ON COUNT(S) ___

(SEE SEPARATE ORDER)

[X] DEFENDANT WAS ADVISED OF HIS RIGHT TO HAVE THIS SENTENCE REVIEWED BY THE SUPERIOR COURTS SENTENCE REVIEW PANEL.

[X] FELONY SENTENCE
[ ] MISDEMEANOR SENTENCE

WHEREAS, the above-named defendant has been found guilty of the above-stated offense, WHEREUPON, it is ordered and adjudged by the Court that: The said defendant is hereby sentenced to confinement for a period of 15 years in the State Penal System or such other institution as the Commissioner of the State Department of Corrections or Court may direct, to be computed as provided by law. HOWEVER, it is further ordered by the Court:

[X] 1) THAT the above sentence may be served on probation

[ ] 2) That the first ___ years of this sentence be served in confinement, and that following the Defendant's release from confinement the remainder of the sentence herein imposed be served by the Defendant on probation; PROVIDED, that the said Defendant complies with the following general and special conditions herein imposed by the Court as a part of this sentence.

The defendant, having been granted the privilege of serving all or part the above-stated sentence on probation, hereby is sentenced to the following general conditions of probation:

[ ] 1) Do not violate the criminal laws of any governmental unit.

[ ] 2) Avoid injurious and vicious habits – especially alcoholic intoxication and narcotics and other dangerous drugs unless prescribed lawfully.

[ ] 3) Avoid persons or places of disreputable or harmful character.

[ ] 4) Report to the Probation-Parole Supervisor as directed and permit such Supervisor to visit him at home or elsewhere.

[ ] 5) Work faithfully at suitable employment or pursue his education full time and support his legal dependents in so far as is possible.

[ ] 6) Do not change his present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor.

[ ] 7) Be truthful with the Probation Officer.

[ ] OTHER CONDITIONS OF PROBATION

IT IS FURTHER ORDERED that the defendant pay a fine in the amount of ___ plus $50 or 10%, whichever is less pursuant to O.C.G.A. § 15-21-70, and pay restitution in the amount of ___.

It is ordered that this sentence be served consecutive to the sentence imposed in Count I of this indictment.

It is ordered that he pay [Partial *JB*] restitution through the probation office to the Regents of the University System of Georgia for the use of the University of Georgia Library in the amount of $45,000.00 at $3,000.00 per year beginning on the last day of the first year of probation and continuing annually thereafter for an agregate amount of $45,000.00.

The duration of this probation sentence is to enable the defendant to earn the sums necessary to pay the restitution.

IT IS FURTHER ORDER of the Court, and the defendant is hereby advised that the Court may, at any time, revoke any conditions of this probation and/or discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law after deducting therefrom the amount of time the defendant has served on probation.

The defendant was represented by the Honorable Ernest DePascale Attorney at Law Clarke County, by (Employment).

If all or any part of this sentence is probated I certify that I completely understand the meaning of the order of probation and the conditions of probation.

_____
Signature of Probationer

_____
Date

So ordered this 8th day of September 19 88

/s/ James Barrow
Judge Superior Courts,
Western Judicial Circuit

Filed in Office, this 12th day of Sept., 1988 Sherry Wages
Deputy Clerk

IN THE SUPERIOR COURT OF CLARKE COUNTY, GEORGIA

FINAL DISPOSITION

State of Georgia

vs

Robert M. Willingham

CRIMINAL ACTION NO. SU-87-CR-0992

OFFENSE(S)
CT. I – Theft by Conversion

July TERM, 1988

[ ] PLEA:

[ ] NEGOTIATED

[ ] GUILTY ON COUNT(S) ___

[ ] NOLO CONTENDERE ON COUNTS(S) ___

[ ] TO LESSER INCLUDED OFFENSE(S) ___

ON COUNT(S) ___

[X] JURY

[ ] NON-JURY

[X] VERDICT:

[X] GUILTY ON COUNT(S) I-XII & XIV

[ ] NOT GUILTY ON COUNT(S) ___

[ ] GUILTY OF INCLUDED OFFENSE(S) OF ___

ON COUNT(S) ___

[ ] OTHER DISPOSITION

[ ] NOLLE PROSEQUI ORDER ON COUNT(S)___

[ ] DEAD DOCKET ORDER ON COUNT(S) ___

(SEE SEPARATE ORDER)

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[ ] 1) THAT the above sentence may be served on probation

[ ] 2) That the first ___ years of this sentence be served in confinement, and that following the Defendant's release from confinement the remainder of the sentence herein imposed be served by the Defendant on probation; PROVIDED, that the said Defendant complies with the following general and special conditions herein imposed by the Court as a part of this sentence.

---

* * *

The defendant was represented by the Honorable Ernest DePascale Attorney at Law Clarke County, by (Employment).

If all or any part of this sentence is probated I certify that I completely understand the meaning of the order of probation and the conditions of probation.

_____
Signature of Probationer

_____
Date

So ordered this 8th day of September 19 88

/s/ James Barrow
Judge Superior Courts,
Western Judicial Circuit

Filed in Office, this 12th day of Sept., 1988 Sherry Wages
Deputy Clerk

WHOLE COURT

DEC 5 1990

In the Court of Appeals of Georgia

A90A1004. WILLINGHAM v. THE STATE. S-47C to Ca

CARLEY, Chief Judge.

Appellant was tried before a jury and found guilty of thirteen counts of theft by conversion of documents from the University of Georgia Library. He appeals from the denial of his motion for new trial.

1. The denial of appellant's motion to suppress is enumerated as error.

Appellant's reliance upon *Hill v. State*, 193 Ga. App. 280 (387 SE2d 582) (1989) is misplaced. Insofar as *Hill* might arguably be relevant to the facts of the instant case, it has been overruled. *State v. Harber*, ___ Ga. App. ___ (Case Number A90A1077, decided December 5, 1990). Appellant's remaining contentions have been considered and are found to be without merit. The trial court was authorized to find that all searches were conducted in full compliance with applicable constitutional and statutory requirements.

2. We find no error in the trial court's failure to sustain appellant's challenge for cause which was directed towards prospective jurors who were employees of the University of Georgia, but who were not otherwise employed in, or assigned to, the University of Georgia Library. See *Jordan v. State*, 247 Ga. 328, 338 (6) (276 SE2d 224) (1981); *Culbertson v. State*, 193 Ga. App. 9, 10 (2) (386 SE2d 894) (1989); *Hickox v. State*, 138 Ga. App. 882 (1) (227

SE2d 829) (1976). See also *United States v. Boyd*, 446 F2d 1267, 1275 (10) (5th Cir.) (1971). This is *not* a case wherein the prospective jurors were employees of appellant or any other *party* to the case. Compare *Kesler v. State*, 249 Ga. 462, 470 (6) (291 SE2d 497) (1982); *Daniel v. Bi-Lo, Inc.*, 178 Ga. App. 849, 850 (1) (344 SE2d 707) (1986). Only appellant and the State were parties in this *criminal* case. While *kinship* to the victim may automatically disqualify prospective jurors in a criminal case pursuant to OCGA § 15-12-163 (b) (4), mere *employment* by the University of Georgia when the actual victim was the University of Georgia Library is *not* a *per se* disqualification under the above cited holdings.

3. It was not error to admit, over appellant's objections, numerous exhibits which were adequately shown to be business records of the University of Georgia Library. See *Gray v. Cousins Mort. & Equity Investments*, 150 Ga. App. 296 (1) (257 SE2d 365) (1979); *Lewis v. United Calif. Bank*, 143 Ga. App. 126 (1) (237 SE2d 645) (1977) aff'd 240 Ga. 823 (242 SE2d 581) (1978); *Cotton v. John W. Eshelman & Sons, Inc.*, 137 Ga. App. 360, 361 (1) (223 SE2d 757) (1976).

4. The evidence, when construed most favorably for the State, was sufficient to authorize a rational trier of fact to find proof of appellant's guilt beyond a reasonable doubt and it was not, therefore, error to deny his motion for a directed verdict of acquittal. See *Adcock v. State*, 170 Ga. App. 753 (1) (318 SE2d 492) (1984) aff'd 253 Ga. 328 (322 SE2d 61) (1984).

5. Having considered appellant's fatal variance argument, we find that it has no merit. The evidence,

when construed most favorably for the State, would authorize a finding that within the applicable statute of limitations, appellant committed the crimes that the multi-count indictment alleged he had committed. See *Decker v. State*, 139 Ga. App. 707, 709 (5) (229 SE2d 520) (1979).

Judgments affirmed. Deen, P. J., McMurray, P. J., Birdsong and Cooper, JJ., concur. Banke, P. J., concurs specially. Sognier and Pope, JJ., dissent. Beasley, J., concurs in Divisions 1, 3, 4, and 5, but dissents as to Division 2, and as to the judgment.

A90A1004. WILLINGHAM v. THE STATE. S-47.

BANKE, Presiding Judge, concurring specially.

Pursuant to OCGA § 20-3-72, university police officers "have the power to make arrests for offenses committed upon any property under the jurisdiction of the board of regents. . . . " As the officers in the present case were investigating thefts of university property which had occurred upon university property, it follows that they were acting entirely within the scope of their law enforcement jurisdiction under § 20-3-72. For this reason, I agree that the trial court acted properly in denying the appellant's motion to suppress.

A90A1004. WILLINGHAM v. THE STATE. S-47 to Ca

SOGNIER, Judge, dissenting.

I respectfully dissent.

1. Since this case will be decided en banc on the same day that *State v. Harber*, ___ Ga. App. ___ (Case No. A90A1077, decided December 5, 1990) is issued, I believe the parties in the instant case are entitled to the same thorough treatment of the search and seizure issue as is given in *Harber*. Hence, for this case I again state my view that *Hill v. State*, 193 Ga. App. 280 (387 SE2d 582) (1989) was correctly decided and controls the search and seizure issue raised by appellant. Since the searches at issue were conducted prior to the effective date of the 1990 amendments to OCGA §§ 17-5-20, 17-5-21 (Ga. Laws 1990, p. 1980, §§ 1-3), the only authority directly addressing the power of university system police to obtain and execute search warrants beyond the confines of a campus is our decision in *Hill*. In overruling the denial of the defendants' motion to suppress, this court held that because OCGA § 20-3-72 authorized university system police to make arrests "for offenses committed upon any property under the jurisdiction of the board of regents and for offenses committed upon any public or private property within 500 yards of any property under the jurisdiction of the board," search warrants likewise " 'must be confined to the territorial limits of the campus.' [Cit.]" Id. at 281.

It is uncontroverted that the searches in the case at bar were not conducted within these territorial limits. Although the thefts did occur "on property under the jurisdiction of the board of regents," we concluded in *Hill*

that the statutory enactments governing university system police do not contemplate the exercise of their law enforcement powers beyond the territorial boundaries defined in OCGA § 20-3-72. I note that the university police officers who conducted the searches at issue were certified peace officers, and OCGA § 17-5-24 has been construed to authorize the execution of a search warrant by a certified peace officer outside his arrest jurisdiction. *Bruce v. State*, 183 Ga. App. 653 (359 SE2d 736) (1987). Nonetheless, a certified peace officer's authority arises only from express statutory authorization or by virtue of public employment or service. OCGA § 35-8-2(8)(A). Unlike university system police, other law enforcement officers authorized under Georgia law are given a number of specified duties and powers in addition to the power to arrest. See OCGA § 35-2-33 (state patrol); OCGA § 36-8-5 (county police); OCGA § 35-3-8 (GBI agents); OCGA § 35-3-9 (GBI narcotics agents). In contrast, OCGA § 20-3-72, which was enacted in 1966 (Ga. Laws 1966, p. 370), and is codified in the postsecondary education chapter of Title 20, is the only statute that specifically grants any law enforcement power to university system police. Accordingly, any authority of such officers beyond that specified in OCGA § 20-3-72 must arise from the general power of the board of regents to create and regulate universities. See Ga. Const. art. VIII, sec. IV, para. I; OCGA § 20-3-20 et seq. There is no other statute in Title 20, Chapter 3, Article 2 or elsewhere in our Code which grants to the board of regents any police powers beyond the territorial limits of the university system. Since university system police have no express statutory authority beyond university system property, and their

employer, the board of regents, does not have the authority to grant such powers, we cannot construe the peace officer certification provisions to authorize university system police to exercise law enforcement powers beyond the territorial limits established by OCGA § 20-3-72.

This conclusion is consistent with the 1990 amendments to OCGA §§ 17-5-20 and 17-5-21, which were enacted after our decision in *Hill*, supra. OCGA § 17-5-20 was rewritten to provide in paragraph (a) that "[a] search warrant may be issued only upon the application of an officer of this state or its political subdivisions charged with the duty of enforcing the criminal laws or a currently certified peace officer engaged in the course of official duty, whether said officer is employed by a law enforcement unit of: (1) [t]he state or a political subdivision of the state; or (2) [a] university, college, or school." The 1990 revision to OCGA § 17-5-21 included the addition of a new paragraph (d) providing that when a campus police officer executes a search warrant by campus police "beyond the arrest jurisdiction of a campus policeman pursuant to Code Section 20-3-72, the execution of such search warrant shall be made jointly by the certified peace officer employed by a university . . . and a certified peace officer of a law enforcement unit of the political subdivision wherein the search will be conducted." These revisions, although including campus police in the search and seizure laws for the first time, indicate that the General Assembly retained an express distinction between certified peace officers employed by a college or university and other certified peace officers, and did not elect to extend to campus

police authority equal to that possessed by law enforcement officers of the State or its political subdivisions.

This court has long recognized that " ' "[p]roceedings for the issuance of search warrants are to be strictly construed, and every constitutional and statutory requirement must be fully met, including all formalities required by statute, before a valid search warrant may issue. Moreover, a statute prescribing the method of issuing search warrants must be read and construed in the light of, and conform in all essential respects to, the provisions of the constitution granting immunity from unreasonable searches and seizures." [Cit.] It should be borne in mind that here we are dealing with a valuable guaranty, a part of the Bill of Rights, the subject matter of the Fourth Amendment to our national Constitution. We, who have this right, must carefully guard it against infringement.' " *Pruitt v. State*, 123 Ga. App. 659, 664 (182 SE2d 142) (1971). As a result, I find that the searches on February 2 and 17 and March 30 were not authorized under the law applicable at the time, and consequently find the trial court erred by denying appellant's motion to suppress the evidence seized. See *Hill*, supra at 281.

I further agree with appellant that the one consensual search conducted on February 3 was invalid because the officers sought and gained entry to appellant's home for the express purpose of obtaining an item they had seen during prior searches, and thus, despite appellant's apparent consent, the evidence seized in the second search was tainted as fruit of the poisonous tree of the prior illegal searches under the standard set fourth in *Wong Sun v. United States*, 371 U.S. 471, 488 (83 SC 407, 9 LE2d 441, 445) (1963). Even assuming, without deciding,

that appellant's consent to search was voluntary and not coerced, evidence seized during the search on February 3 could not be used against appellant at trial unless the search was sufficiently attenuated from the prior illegal searches. *United States v. Robinson*, 625 F2d 1211, 1219 (5th Cir. 1980); *Brown v. State*, 188 Ga. App. 184, 187 (372 SE2d 514) (1988). The factors to be considered are the temporal proximity of the illegal activity and the consent, the presence of intervening circumstances, and the purpose and flagrancy of the official misconduct. *Robinson*, supra. Here, there were no intervening circumstances or breaks in the chain of illegality, and Officer Jones testified the university police returned to appellant's home for the express purpose of retrieving a map they had seen on prior entries. Nor was there a significant lapse of time between this search and the one conducted a day earlier. Accordingly, I would reverse the denial of appellant's motions to suppress.

2. I also agree with appellant that the trial court erred by not excusing for cause all prospective jurors who were employed by the University of Georgia. Our Supreme Court has adopted in criminal cases the rule initially applied in civil cases of disqualifying for cause potential jurors who are employed by the same entity as the defendant when the defendant has the power to discharge the employees. *Kesler v. State*, 249 Ga. 462, 470-471 (6) (291 SE2d 497) (1982). I believe we also should adopt for criminal cases the rule that a prospective juror should be disqualified for cause " 'when there exists any business relation between himself and one of the parties which may tend to influence the verdict.' [Cit.]" *Daniel v. Bi-Lo, Inc.*, 178 Ga. App. 849, 850 (344 SE2d 707) (1986).

" 'The wisdom of such [a] rule is substantiated when one considers the plight of any employee during voir dire. "The single purpose for voir dire is the ascertainment on the merits with objectivity and freedom from bias and prior inclination." (Cit.) An individual subpoenaed to jury service in the performance of his public duty should not be called upon to answer affirmatively or negatively with its resultant impact either way upon him personally the question: "Would your employment prevent you from fulfillment of your sworn duty as a juror to act fairly and impartially and without bias as between the parties in this case?" In order to [e]nsure that each party obtains a panel of impartial jurors it is essential to rule that regardless of any presumption employees should be held incompetent to service as a juror in a case in which the employer is a party.' [Cit.] This rule is applicable to parties who, although not named in the suit, have a financial or other interest in the outcome of the litigation to be tried. [Cits.] . . . ' "An employee . . . may be, in rare instances, an impartial juror in passing upon the rights of his employers. It is possible for a judge or juror to be so absolutely fair that he could try his own cause. But there must be a rule upon the subject, and the only rule that can be adopted with safety is one which recognizes the interest to which humanity is generally susceptible and not a rule based upon rare exceptions." ' [Cit.]" Id. at 850-851. Surely the Sixth Amendment entitles a criminal defendant to the same protection. Where, as here, seven of the prospective jurors were employed by the victim of the theft and were dependent upon that employer for their income, they should have been disqualified for cause, and the failure to do so constitutes reversible error.

See Id. at 852 (1); see also *Crumpton v. Kelly*, 185 Ga. App. 245-246 (1) (363 SE2d 799) (1987).

I am authorized to state that Judge Pope concurs in the dissent and Judge Beasley concurs in Division 2 only of the dissent.

Court of Appeals
of the State of Georgia

ATLANTA,

DECEMBER 20, 1990

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Case No. A90A1004

ROBERT M. WILLINGHAM V. THE STATE

Upon consideration of the motion for rehearing filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta DEC 20 1990

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Victoria McLaughlin
Clerk.

Case No. S91C0533

SUPREME COURT OF GEORGIA

ATLANTA February 1, 1991

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

Application for certiorari to review the Court of Appeals' decision in:

ROBERT M. WILLINGHAM

V.

THE STATE

having been filed in this Court and motion for extension of appeal bond having been filed, it is hereby ordered that said motion be granted.

Pursuant to OGGA §17-6-1(d) as amended petitioner's appeal bond is extended.

SUPREME COURT OF THE STATE OF GEORGIA,

CLERK'S OFFICE, ATLANTA

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Lynn M. Hogg, Deputy Clerk.

S91C0533

SUPREME COURT OF GEORGIA

ATLANTA May 10, 1991

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ROBERT M. WILLINGHAM v. THE STATE

It appearing that the writ of certiorari was improvidently granted, it is hereby vacated. All the Justices concur, except Smith, P.J., and Benham, J., who dissent.

Court of Appeals No. A90A1004

SUPREME COURT OF THE STATE OF GEORGIA,

CLERK'S OFFICE, ATLANTA

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Lynn M. Hogg, Deputy Clerk.

NO. 91-231

In The

Supreme Court of the United States

October Term, 1991

STATE OF GEORGIA,
Petitioner,

VS.

ROBERT M. WILLINGHAM, JR.,
Respondent,

On Petition For A Writ of Certiorari
To The Court of Appeals of Georgia

BRIEF FOR THE RESPONDENTS IN OPPOSITION

HARRY N. GORDON
District Attorney
325 E. Washington St.
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Athens, Georgia 30601
(404) 354-2820

QUESTIONS PRESENTED

I. THE POLICE OFFICERS ACTED REASONABLY AND IN GOOD FAITH IN OBTAINING THE FIRST SEARCH WARRANT AND ALL SUBSEQUENT SEARCH WARRANTS.

II. ALL SUBSEQUENT SEARCHES TO THE FIRST SEARCH CORRECTLY RELIED AT LEAST DERIVATIVELY UPON THE FIRST SEARCH AND SHOULD NOT BE EXCLUDED AS FRUIT OF THE POISONOUS TREE.

III. THE INITIAL TWO SEARCHES WERE NOT GENERAL SEARCHES, AND THE FIVE INTERRELATED SEARCHES DID NOT CONSTITUTED A SINGLE GENERAL SEARCH.

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AUTHORITIES CITED

SUMMARY OF FACTS

On October 7, 1985, the University of Georgia Main Library reported a theft by taking incident to the University police. (Vol. V, T-708, 711; Vol. VI, T-827). Mr. Thomas Camden, head of special collections, had been informed by a rare book dealer, Mr. Joseph Rubinfine of Pennsylvania, that he had in his possession a manuscript belonging to the University. (Vol. V, T-727; Vol. VI, T-811-812). The manuscript was a 1783 letter written by Nathaniel Greene. Mr. Camden, confirmed that the manuscript was indeed University property. (Vol. V, T-727; Vol. VI, T-812). Mr. Rubinfine had received the Greene letter from Mr. David Wilding of Florida. (Vol. V, T-724). Mr. Wilding was a seller representing Mr. Thomas Monroe of Atlanta. (Vol. V, T-710, 734-6). Mr. Monroe had received the letter from Mr.

Harvey Dan Abrams, a dealer in Atlanta. (Vol. V, T-711, 734-6; Vol. VI, T-854-6, 859). Mr. Abrams, a past business associate with the University library (Vol. VIII, T-1148; Vol. IX, T-1365), admitted that he had received the letter from Appellant Robert "Skeet" Willingham. (Vol. IX, T-1402). Mr. Willingham was an employee of the University of Georgia Main Library and had been "acting" head of the special collections department, which housed rare books, maps, and manuscripts. (Vol. VI, T-840). Part of this chain of custody is reflected in other similar "theft by taking" transactions to be detailed infra. The Nathaniel Greene letter was sent back through the chain of custody and the University was in receipt of it. (Vol. V, T-728, 735; Vol. VI, T-860; Vol. IX, T-1403).

On July 23, 1986, the University of Georgia police were notified of possible

thefts of rare maps from the special collections department of the Main Library. (Exhibit A). The police were given a list of items missing from a portion of the map inventory. (Vol. VII, T-1045-6). It was found that there was a ten percent loss of map inventory. (Vol. IV, T-672).

An earlier May inventory for the fiscal year 1984-1985 had been performed by Willingham, which was purportedly finished in 1 1/2 days, and which showed no missing maps. (Vol. XII, T-1964, 1982-4). During his interview with police in August, Appellant stated that he knew about the theft of the map in question, but that he did not take it nor did he know who did. (Vol. VII, T-1060). At this interview, Willingham was read his rights, stated that he understood his rights, and agreed to talk with the police. (Vol. VII, T-1054-5). Willingham, a private collector of rare

books and maps himself, was very nervous and changed his story on occasion. (Vol. VI, T-905).

Beginning in September, 1986, several other maps were found to be missing. Prices of rare maps of the same description were published in a sales catalog of dealer W. Graham Arader, III. Mr. Arader had subsequently been in contact with the library. (Vol. VII, T-1016, 1018-9).

By October, 1986, Mr. Camden became aware that the University library was missing a very valuable eight volume set of "Redoute's Lilies," a collection of botanical plates. (Vol. VI, T-957-8). Mr. Arader, informed Mr. Camden that Willingham had sold an eight volume set to Dr. Lawrence Alligood through dealer Harvey Dan Abrams of Atlanta and that Arader suspected they were University of Georgia property. (Vol. VII, T-1016, 1018-9; Vol. IX, T-1376-7). Mr.

Arader had been interested in buying the set himself. (Vol. VII, T-1009-10; Vol. VIII, T-1217, 1233). Mr. Arader had previously done business with Willingham in the past. (Vol. VII, T-1018).

On October 15, 1986, the defendant's last day of employment, University police interviewed Mr. Willingham in his office, and read his rights. (Vol. VI, T-918; Vol. VII, T-1053, 1056). On December 17, 1986, University again interviewed Mr. Willingham, this time at his home. The police again read him his rights and he stated that he understood his rights and that he would talk at that time. (Vol. VI, T-875, 877-8, 885, 898). He made ambiguous statements concerning his knowledge and the whereabouts of the Lilies and various maps. He also stated that he had forgotten about his business transactions with Mr. Arader. He said that he did sell a set of Redoute's

Lilies, which allegedly belonged to a deceased relative, to Dr. Lawrence Alligood of Carrollton, Georgia. (Vol. VI, T-875, 879, 886). Admitting that he was a suspect, Willingham did not have any proof that he had received the set of Lilies from a deceased relative. (Vol. VI, T-880, 886, 900, 911, 920, 928; Vol. VII, T-1036, 1061). He concluded the interview by stating that he wanted to talk to his attorney. (Vol. VI, T-872, 875, 879, 906, 931).

Dr. Alligood made arrangements for the purchase from Harvey Dan Abrams, the aforementioned dealer in Atlanta, who was selling The Lilies for someone else. (Vol. VIII, T-1215). Abrams, who regularly made appraisals for the defendant on items of rarity at the University Library, contacted Dr. Alligood about the purchase. The agreed pay arrangement would be for a total selling

price of $54,000 cash, with one payment of $27,000 immediately and the second payment of $27,000 at the end of the year. (Vol. VIII, T-1218-9). Approximately six months later, Abrams contacted Alligood and stated that the owner wanted the remaining $27,000 then. (Vol. VIII, T-1220). Alligood, supposing that the owner was in need of cash (Vol. VIII, T-1235-6), replied that he could not pay $27,000 earlier than had been agreed upon, but that he could arrange a payment of $13,000, only if he met the owner. Abrams agreed and arranged the meeting. At the meeting, Abrams introduced Alligood to Skeet Willingham as the owner. (Vol. VIII, T-1222-4, 1236; Vol. IX, T-1355). Willingham took the cash. No receipt was given. (Vol. VIII, T-1222).

Dr. Alligood, as a private collector, kept two of the plates and two volumes from the eight volume Redoute's Lilies for his

personal use, and placed the remaining six volumes on consignment with David S. Ramus, an Atlanta art dealer. (Vol. VII, T-996; Vol. VIII, T-1240). After a short period of time (Vol. VIII, T-1228), Alligood requested all of the prints returned. (Vol. VIII, T-1240). The doctor sold the remaining six volumes to Thomas Monroe of Atlanta, who again resold them. (Vol. V, T-739, 777-8; Vol. VIII, T-1225-7; Vol. V, T-781). The two volumes retained by Dr. Alligood were given to the University police to determine if they were indeed University property. (Vol. VII, T-996, 1032-4; Vol. VIII, T-1247). The title page was given to Jim Kelley of the Georgia Division of Forensic Sciences for analysis. (Vol. VII, T-998-1000). Through an ultraviolet light process, Kelley was able to confirm University records of specific marks of identification. (Vol. VI, T-902-4).

Specifically, the name, H. Jackson, which had been partially eradicated, was observed. Both former employees Susan Tate and Dr. Porter Kellam testified at trial that they had observed the name, H. Jackson, on the title page of the first volume of the Lilies during their employment at the university library. (Vol. VII, T-1074, 1096; Vol. VIII, T-1120).

On December 16, 1986, Mr. Camden of the University Library, contacted University police, again, with a list of items missing. The investigation continued that same day with University police contacting Harvey Dan Abrams, and his associate, Gary Duda. During the interview, Abrams confirmed the sale and payment arrangement of the Lilies. He also confirmed that he had received the "Nathaniel Greene Letter" from Willingham. Gary Duda retrieved from within the residence a McKenney and Hall print "John

Ross-Indian Chief," an alleged gift from Willingham. Duda relinquished the print to the University police. (Vol. VI, T-938; Vol. VII, T-1031). Abrams and Duda later stated that they had received nine other such prints from Willingham which they sold to an Atlanta attorney, Tom Linton. (Vol. VII, T-1257; Vol. IX, T-1391). Arrangements were made for relinquishment of eight of these prints to be analyzed by the Georgia Division of Forensic Sciences. (Vol. VIII, T-1258-9; Vol. X, T-1562).

Three more McKenney and Hall prints were recovered from Deanne Levison, who purchased the Indian prints from Willingham in June 14, 1985. (Vol. VIII, T-1155-8). These prints were also sent to the Georgia Crime lab for analysis. (Vol. VIII, T-1194; Vol. X, T-1564-9). An additional fourth print was bought, but was resold. (Vol. VIII, T-1159).

The McKenney and Hall prints were donated by Mrs. Alice Jacobs, of Athens, to the University Library. She was first contacted in June, 1985, by Tom Camden. Camden was working under the defendant, who was then serving as acting Director of the Rare Book section at the library. Camden told Mrs. Jacobs that someone would get back with her and the defendant, Skeet Willingham, made the second visit. He looked at the books and took what he considered valuable, and left the rest. (Vol. V, T-798). After having the volumes in his possession, he acknowledged her gift, noting that some of the prints seemed to be missing (Vol. V, T-803). Mrs. Jacobs was unaware of any prints missing when she made the donation. (Vol. V, T-799).

The books were appraised by Frank Walsh, an Atlanta dealer, in December of 1985. (Vol. V, T-800; Vol. IX, T-1317).

Walsh counted the prints in Vol. II. having 48 prints and Vol. III. having 24 prints. He did not have any impression that any prints were missing (Vol. IX, T-1319), and would have indicated it in the appraisal if so. (Vol. IX, T-1320-2, 1348). After a considerable period of time, Mrs. Jacobs, unhappy about the visit, called Willingham to get her books back. (Vol. V, T-800). The books were returned. (Vol. V, T-799, 805-6).

After Camden was promoted to the Director of the Rare Book Collection, Mrs. Jacobs called him and told him she wanted to give the books back. (Vol. V, T-800). In January, 1986, Camden acknowledged the 1985 gift of the McKenney and Hall prints and inventoried the prints. Vol. II. had only 36 prints and Vol. III. had 19 prints, making a total of 17 prints missing from the two books. (Vol. VII, T-1260).

The analysis of the Georgia Division of Forensic Sciences, made by Jim Kelley, showed that the eight prints retrieved from attorney Linton and the three prints businesswoman Levison were from the McKenney and Hall volumes donated by Mrs. Jacobs to the University. (Vol. X, T-1564-9). Mrs. Jacobs identified the prints at trail as hers. (Vol. V, T-801).

Because the "Greene Letter," The Lilies, and the McKenney and Hall book all involved Willingham, and since a library inventory (Vol. XII, T-1801) indicated that there were many other missing items to which Willingham had access, an application for a search warrant was made. (A copy of the affidavit and search warrant is attached hereto as Exhibit A.) Out of an abundance of caution, the University of Georgia police officers applied for that warrant before a judge of the Superior Court of the Toombs

Circuit, surpassing the minimum requirement of authorization of a magistrate. That search warrant was executed at the defendant's residence, located in Washington, Wilkes County, Georgia, on December 22, 1986. (Vol. VII, T-1049-50; Vol. IX, T-1438; Vol. XII, T-1802). The University of Georgia police, along with a deputy sheriff of the Wilkes County Sheriff's office, were present. (Vol. IX, T-1439). Mary Ellen Brooks, a library employee, accompanied police to assist in identifying the alleged missing items (Vol. VII, T-1044-6) amidst the many maps, manuscripts, and books at the defendant's residence. (Vol. VII, T-1043-4). There were several hundreds of old books stacked in several rooms, along with a large number of maps and prints on the floors and walls in Willingham's house. (Vol. VII, T-1043, MTS [11-3-1987], 73, 146, 167-7). In

addition to his professional position in special collections at the University Library, Willingham was known to be a private collector and dealer. (Vol. XII, T-2123, MTS [Nov. 3, 1987], 180-1).

No items listed on the affidavit were seized during this search, however three unlisted items, tentatively identified as possible University property, were taken. (Vol. VII, T-1049). Photographs of items similar to those enumerated on the affidavit were taken. (Vol. XII, T-1824). These photos were of the actual rooms of where the items were found to record the location of the items received. (Vol. X, T-1775). One of the three items seized, the "Bernard Romans Map," was identified as being University property by the library card catalog number on it. The admission of the "Romans Map," however, was later suppressed in a Motion to Suppress hearing on July 30,

1988, although Judge Barrow specifically ruled that information gathered during the first search was competent evidence to use in applying for subsequent search warrants.

Consequently, using information obtained during the first search warrant, a second search warrant was issued by a Superior Court judge of the Toombs Circuit. (A copy of the affidavit and search warrant is attached hereto as Exhibit B.) That second search warrant was issued and executed at the Willingham residence on February 2, 1987, with deputies from the Wilkes County Sheriff's Department. (Vol. VIII, T-1267; Vol. IX, T-1441). Three specific items were listed in the affidavit: a map by John DeBrahm, a map by Eleazer Early, and a butterfly print by John Abbot. (Vol. VIII, T-1267; Vol. IX, T-1443).

During that search the University police took numerous pictures to aid in

identification of University property. Many items in special collections were not stamped or marked with university identification, as some past library directors of the special collections department felt that identification stamps or marks were damaging to the property. (Vol. VII, T-1090). Police officers were instructed to take pictures of the house, maps hanging on the wall, prints, and related items of antiquity. (Vol. X, T-1762). Items were stored throughout the house, stacked in closets, book shelves, and on the floor. (Vol. X, T-1762, MTS [Nov. 20, 1987], 11, 13). In order to execute the warrant in trying to find the items listed on the affidavit, police officers had to look in many places (Vol. X, T-1764) as rolled up maps and prints could be found in drawers. (MTS [Nov. 20, 1987], 14).

The "DeBrahm" and "Sturges-Early" maps were seized, but the "Abbot Chestnut

Butterfly" print, seen during the first search, was not found. (Vol. VIII, T-1268; Vol. XII, T-1814, 1816, 1830-2, 2001). The police had instructions to substantiate were items were taken from and specifically where each item was in relation to the room. (Vol. XIV, T-2277, MTS [Nov. 3, 1987] 75-6). A police officer testified that had the "Chestnut Butterfly" print been found during the search, the officers would have left after taking photos only of what they needed for support of finding evidence in relation to the room. (MTS [Nov. 3, 1987], 122A).

The "DeBrahm Map" was identified as University property by the library card number on the back of the map. (Vol. XII, T-1863, 1905, 1914, 1936). The "Sturges-Early Map" was taken and identified by the Georgia Division of Forensic Sciences through an erasure mark on the back as that

of a University property stamp. (Vol. IX, T-1444). Photographs were taken of the numerous items similar to those enumerated on the affidavit. (Vol. XII, T-1821-2).

An additional seizure took place on February 3, 1987, with the written consent of the defendant. (Vol. XII, T-1817, 1823). (A copy of the affidavit and consent to search is attached hereto as Exhibit C). Mary Ellen Brooks had discovered the "Moll Map" (marked with a university stamp and number) was missing. The "Herman Moll Map" was taken from Willingham's home and analyzed on February 6, by the Georgia Division of Forensic Sciences and found to have been cut out of an atlas owned by the University. (Vol. IX, T-1447-8).

Using evidence gathered during the second search, a third search was applied for and issued by a Superior Court judge of the Toombs Circuit. (A copy of the

affidavit and search warrant is attached hereto as Exhibit D). That third search warrant was executed at the Willingham residence on February 17, 1987. (Vol. XII, T-1818). Eleven maps were seized. (Vol. XII, T-1819). In this seizure, the "Bowen Map" was taken and sent to the Georgia Division of Forensic Sciences for analysis. The map was identified as University property on February 19, 1987, by a University Library stamp on the map. Also seized were the "Saltzburg Map of Savannah" and the "Carey Map." Both were identified as University property by Jim Kelley of the Georgia Division of Forensic Sciences. (Vol. X, T-1587). The "Saltzburg Map" was identified as coming from a book which was still in possession of the University Library, and the "Carey Map" was identified as University property by a partially eradicated official University Library stamp on the back. (Vol. X, T-1587).

A fourth and final search warrant was executed at the Willingham residence on March 30, 1987. (Vol. VII, T-1271; Vol. XII, T-1820). (A copy of the affidavit and search warrant is attached hereto as Exhibit E). Three items were known to be taken, a lithograph of Stone Mountain, an issue of the Hancock Advertiser, dated October 13, 1826, and a Georgia Railroad and Banking Stock Certificate. (Vol. VIII, T-1271-3). The Georgia Division of Forensic Sciences verified that the lithograph taken from the Willingham residence was the same as that depicted in a negative of the lithograph on file at the University. (Vol. X, T-1494). The Georgia Division of Forensic Sciences verified the Hancock Advertiser was the same as that in the microfilm records at the University Library. (Vol. X, T-1597). Handwriting analysis indicated that there was a match on the Georgia Railroad and

Banking Company Stock certificates and other stock certificates at the Library.

Tom Camden notified the University police in July of 1987 that he had been contacted by Richard Harwell, past director of the Library. Harwell had seen three lithographs at an antique shop in Washington, Georgia, and thought it was possible that they were University property. University police went to the antique shop and the owner, Pamela Eaton, stated that she took these lithographs on consignment from Skeet Willingham. (Vol. XII, T-1917). One of the lithographs, "Lee and His Generals" was sent to the Georgia Division of Forensic Sciences and was matched with the University Library's photographic records. (Vol. X, T-1494, 1598).

At the close of this investigation, Robert "Skeet" Willingham, was arrested and indicted on fifteen counts of theft by

conversion. One count was dropped prior to trial due to the inadmissibility of a seizure on the first search. The trial jury acquitted the defendant on a second count, regarding a book of Admiral John A. Dahlgren's Orders.

REASONS FOR NOT GRANTING THE WRIT

I. THE POLICE OFFICERS ACTED REASONABLY AND IN GOOD FAITH IN OBTAINING THE FIRST SEARCH WARRANT AND ALL SUBSEQUENT SEARCH WARRANTS.

This court has long had an abhorrence for applying the Exclusionary Rule when the police act in good faith and rely on the legal accrumen of the magistrate before which they applied for their warrant, Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2254

(1975), Stone v. Powell, 428 U.S. 540, 96 S. Ct. 3037 (1976), U.S. v. Calandra, 414 U.S. 338, 94 S. Ct. 613 (1974), U.S. v. Janis, 428 U.S. 457, 96 S. Ct. 3021 (1976).

This reasoning eventually led to the landmark decision handed down in U.S. v. Leon, 468 U.S. 897, 104 S. Ct. 3405 (1984) and Massachusetts v. Sheppard, 468 U.S. 981, 104 S. Ct. 3424 (1984)

A. The officers acted in Good faith and reasonably in supplying the issuing magistrate with information to obtain the first search warrant.

Appellant repeatedly, in his argument, avers that no inventory was performed, however in his statement of facts, Appellant merely says no complete inventory was performed. (Appellant's Brief p. 5).

Appellant, himself, had performed a complete inventory of the map collection and reported results in the annual report. (T. p. 1964 L. 2-7 & 1.23 & 24). When it became apparent that items from special collections were missing a complete map inventory was begun in August, 1986. (T. p. 1965 L. 7-14). It showed approximately 10% of the map collection was missing. (T. p. 672 1.9-17). Based on that inventory which was ongoing in December, 1986, the library personnel and police were sure certain items were missing, although they could not be sure of a total number. (T. p. 1045-1046 & 1801 1.9-17).

The police drew a search warrant and affidavit for Appellant's home and listed items they knew were missing from the library. The police based the affidavit on their investigation into The Lilies, the "Nathaniel Greene Letter," and the Mckenney

and Hall Indian Prints recovered from Harvey Dan Abrams and Gary Duda.

Appellant alleges that the affidavit is a bare bones affidavit because the credibility of the sources is not supported. Since the part each person played in the recovery of the items described in the warrant were fully set out, the issuing judge could draw his own conclusions as to their reliability. "Reasonable minds frequently may differ on the question whether a particular search warrant affidavit establishes probable cause, and preference for warrants is most appropriately effectuated by according great difference to a magistrate's determination." Leon, supra. Appellant specifically cites Graham Arader as someone unworthy of belief. However, Mr. Arader gave very specific information. The investigation of that information showed

that everything alleged by Mr. Arader dealing with The Lilies was true.

Taking each item individually, the police investigation had recovered enough of The Lilie volumes to identify them as University of Georgia property. They had also traced the chain of their possession back to Appellant, who, indeed, admitted selling them. The Greene Letter had been returned. Again the chain of custody ended at Appellant. The Indian prints had been recovered and once again the chain of custody ended at Appellant.

These circumstances together with the fact that special collections were missing other items authorized a magistrate to find probable cause to issue a warrant. "Where police officer's application for a warrant was supported by more than a 'bare bones' affidavit and affidavit related results of an extensive investigation and provided

sufficient evidence to create disagreement among thoughtful and competent judges as to existence of probable cause, the officers reliance on magistrate's determination of probable cause was objectively reasonable and application of extreme sanction of exclusion of evidence seized under warrant was inappropriate, not withstanding that warrant was subsequently found deficient on ground of stale information and failure to establish informant's credibility. Leon, supra.

B. The information in the application for the first search warrant was not too old on which to be relied.

"While it is true that timeliness of information contained in a search warrant affidavit is an important variable, probable

cause is not determined simply by counting number of days between facts relied on and issuance of warrant; rather, whether information is too stale to establish probable cause depends on nature of criminal activity, length of activity, and nature of property to be seized." U.S. v. Shomo, 786 F.2d 981 (10th Cir. 1986) see also U.S. v. Snow, 919 F.2d 1458 (10th Cir. 1990). ["A Georgia case has stated this point most graphically when it stated "the observation of a half-smoked marijuana cigarette in an ashtray at a cocktail party may well be stale the day after the cleaning lady has been in; the observation of the burial of a corpse in a cellar may well not be stale three decades later." Mitchell v. State, 239 Ga. 456 (1977).]

Appellant contends since The Lilies were sold in 1984 and the "Nathaniel Greene Letter" was returned in 1985, those two

instances are too old to be reliable. At least one Indian print was given to Gary Duda in May, 1986. (T. p. 1411 1.17-24). These three events taken together show a long standing pattern of criminal behavior by Appellant. "Where affidavit recites facts indicating ongoing, continuous, criminal activity, passage of time becomes less critical for purposes of determining probable cause for issuance of search warrant." Shomo, supra.

Moreover, Appellant was know to collect and deal in rare books, maps, and manuscripts which he kept in his home. Because of the very nature of these items, the right buyer for a particular item might not be readily available. It would be logical to assume that some of the items would be found in Appellant's home as part of his own collection on awaiting sale for protracted lengths of time. "Where property

sought is likely to remain in one place for a long time, probable cause may be found even though there was substantial delay between occurrence of event relied on and issuance of warrant." Snow, supra.

C. The officers did not rely on a bare bones affidavit.

For reasons already stated, this enumeration is without merit.

II. ALL SUBSEQUENT SEARCHES TO THE FIRST SEARCH CORRECTLY RELIED AT LEAST DERIVATIVELY UPON THE FIRST SEARCH AND SHOULD NOT BE EXCLUDED AS FRUIT OF THE POISONOUS TREE.

The police officers in this case performed a complete and through

investigation as to each of the items they knew the whereabouts of that had been stolen from the University Library. They presented a summary of that investigation in an affidavit for a search warrant. They presented that affidavit to a judge of the Superior court out of an abundance of caution rather than a mere magistrate. That judge made a determination that a search warrant should issue. "Here, there was an objectively reasonable basis for the officers . . ." belief that the warrant authorized the search they conducted. The officers took every step that could reasonably be expected of them. At the point where the judge returned the affidavit and warrant to the detective, a reasonable police officer would have concluded, as the detective did, that the warrant authorized a search for the materials outlined in the affidavit . . . . A police officer is not

required to disbelieve a judge who has just advised him that the warrant he possesses authorizes him to conduct the search he has requested. Massachusetts v. Sheppard, 468 U.S. 981, 104 S. Ct. 3424 (1984).

Since the police were legitimately empowered to search Appellant's home, the trial court erred in suppressing the fruits of the first search. Additionally, since the officers were legally in Appellant's house they could use their observances there as probable cause for subsequent search warrant affidavits. "The Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands, and an examination of its origin and purposes makes it clear that the use fruits of a past unlawful search 'work[s] no new Fourth Amendment wrong.'" U.S. v. Calandra, 414 U.S. 338, 94 S. Ct. 613, 623 (1974).

For the above-stated reasons there is no merit to any contention made by Appellant as to his second question of law.

Both this question of law and Appellant's first question of law request this court to reexamine issues of law enunciated in Leon. There are no new issues presented in these two questions for this court's determination.

This is not a situation where Leon is being interpreted differently in different circuits. see U.S. v. FAMA, 758 F.2d 834 (2nd Cir. 1985); Gluck v. U.S., 771 F.2d 750 (3rd Cir. 1985); U.S. v. Owens, 848 F.2d 462 (4th Cir. 1988); U.S. v. Breckenridge, 782 F.2d 1317 (5th Cir. 1986); U.S. Bowling, 900 F.2d 926 (6th Cir. 1990); U.S. v. Hornick, 815 F.2d 1156 (7th Cir. 1987); U.S. v. Taxacher, 902 F.2d 867 (11th Cir. 1990).

For the above-stated reasons, it is respectively requested that cert be denied as to the above issues.

III. THE INITIAL TWO SEARCHES WERE NOT GENERAL SEARCHES, AND THE FIVE INTERRELATED SEARCHES DID NOT CONSTITUTE A SINGLE GENERAL SEARCH.

Although presented in many paragraphs and sub paragraphs, Appellant's third question of law raises only two issues. The first issue raised is whether or not the searches of Appellant's residence individually or collectively constituted a general search or searches.

"The prohibition against general searches and warrants is based on privacy concerns, which are not implicated when an officer with a lawful right of access to an item in plain view seizes it without a warrant." Horton v. California, ___ U.S. ___, 110 S. Ct. 2301 (1990) at 2304.

In the instant case, the first search warrant listed specific items sought. Those

items were items known to be missing from the University Library, Special Collections. Each subsequent search also listed specific items sought in connection with this case. The police officers neither requested nor were granted general search power.

In order to ensure that the items seized were those sought, the police enlisted the help of a special collections employee, with expertise in the area to aid in their identification. Her name was Mary Ellen Brooks. She was involved in the ongoing inventory being done at Special Collections. (Vol. XII, T-1965). As such, she was privy to the daily discoveries of other missing items. Although none of the items sought in the first search warrant were actually found, Ms. Brooks did identify three items known to be missing from the university. "It has long been settled that

objects falling into plain view of an officer who has a right to be in a position to have that view are subject to seizure and may be introduced into evidence." Ker v. State of California, 374 U.S. 23, 83 S. Ct. 1623 (1963).

Since the limits of each search were specifically and reasonably limited in their scope to property which had a probability of being in Defendant's home, they cannot be characterized as general searches.

This area presents no new question of law for this court's determination or interpretation. Nor does justice require this court to modify or change the lower courts' rulings on this matter.

The second issue raised in the Appellant's third question of law concerns the taking of photographs during the searches in question. Specifically, this

issue addresses the first and second searches, where all of the pictures were taken. It is undisputed that there 257 pictures taken in the second search. In the first search, there were approximately 36 pictures taken. (MTS [Nov. 20, 1987], 37). It is interesting to note that Appellant raises no objection to the pictures taken during the first search.

The Appellant does object to the pictures taken in the second search. Appellant, however, is misplaced in his reliance on Espinoza. U.S. v. Espinoza, 642 F.2d 153 (4th Cir. 1981). Although Espinoza holds, among other things, the taking of photographs may, under some circumstances, constitute an unreasonable seizure, the State respectfully suggests that is a misinterpretation of the facts presented in U.S. v. Johnson, 452 F.2d 1363 (DC Cir. 1971). In Johnson, during a person's

unlawful detention, his picture was taken. It is suggested that a more proper statement of the facts in that case would be that a photograph obtained as a result of an illegal seizure would require suppression.

The Horton court stated that "'search' comprises individual interest in privacy; 'seizure' deprives individual of dominion over his or her person or property." Horton v. California, ___ U.S. ___, 110 S. Ct. 2301 (1990).

Espinoza, supra., goes on to state, "It is well settled, however, that 'objects falling into plain view of an officer who has a right to be in
the position to have that view are subject to seizure and may be introduced into evidence.' Harris v. U.S., 390 U.S. 234, 88 S. Ct. 992 (1968). The evidence in Espinoza that was introduced under that plan view doctrine were photographs depicting stacks

of explicit books and magazines, various business records, and a photograph of the business license . . ."

Although the Appellant contends that such photos should be considered as items seized, the court in Horton v. California defines "seizure" as a deprivation of an individual over the dominion of his or her personal property. The photos in the instant case did not deprive the Appellant of his possessory interest. The taking of the photos was part of the search, which the Horton court defines as a compromise of an individual interest in privacy. The court added, however, that seizure of an object in plain view does not involve intrusion on privacy. Horton, supra.

In Dow Chemical Co. v. U.S., 476 U.S. 227, 106 S. Ct. 1819 (1986), the court held "that the taking of aerial photographs of an industrial plant complex from navigable

airspace is not a search prohibited by the Fourth Amendment."

In California v. Ciraolo, 476 U.S. 207, 106 S. Ct. 1809 (1986), the court held that the Fourth Amendment was not violated by the naked-eye aerial observation of respondent's backyard, and in doing so, this court, with full knowledge that the observing officer had at the time of making his observation also photographed what he saw, implicitly equated the photograph with the naked eye view for the Fourth Amendment purposes.

In Sovereign News Co. v. U.S., 690 F.2d 569 (6th Cir. 1982),

> the officers who searched the premises of Sovereign News did not open boxes containing materials not listed in the warrant nor did they peer into areas which could not have contained the specified items. The officers noted the titles of films and magazines which were in plain view during the course of their search. In addition, they took note

> of other business records. The government used these notes to prepare a second search warrant. The information related to the warrant being executed and was gathered in an unobtrusive manner. Thus, the facts meet the primary requirements of the `plain view' doctrine. Briefly, those requirements are: (a) the officer must be lawfully on the premises; (b) the incriminating nature of the evidence seized must be immediately apparent; and (c) the discovery must be inadvertent. See Coolidge v. New Hampshire, 403 U.S. 443 at 465-71, 91 S. Ct. 2022 at 2037-40 (1971).

The inadvertency requirement was of course abandoned by this court in its opinion in Horton v. California, ___ U.S. ___, 110 S. Ct. 2301 (1990).

"The facts here also fit U.S. v. Espinoza. In Espinoza, agents photographed the Defendant's office and warehouse during an obscenity investigation. the court excused the `seizure' of the agent's `mental

images' under the plain view exception. The photographer was lawfully present on the premises; the images were evidence of criminal activity . . . . " Sovereign News Co. v. U.S., supra at 573 (citing U.S. v. Espinoza, supra, at 166-67).

This court expressed a similar opinion in Arizona v. Hicks, regarding the recordation of serial numbers when it was held "that the mere recording of the serial numbers did not constitute a seizure." Arizona v. Hicks, 480 U.S. 321, 107 S. Ct. 1149 (1987).

This court also held that "[t]he plain-view doctrine is grounded on the proposition that once police are lawfully in a position to observe an item firsthand, its owner's privacy interest in that item is lost; the owner may retain the incidents of title and possession but not privacy." Illinois v. Andreas, 463 U.S. 765, 103 S. Ct. 3319 (1983).

In the instant case, although unaware of it at the time, the police followed the exhortations of a prior case which is amazingly similar as the case at bar. In U.S. v. Waxman, police obtained a search warrant for three stolen art objects. U.S. v. Waxman, 572 F. Supp. 1136 (1983). Since the police had decided that Dr. Waxman was a collector of art (as was Appellant) the affidavit "stated that Defendant was a collector of art, that each of the stolen items was rare, unique, and valuable, and that the items had not surfaced in the art community and were difficult to sell. The plain theory to connect the objects to Defendant's residence obviously was that it is likely an art collector would store or display artwork in a place where he most often could appreciate it, his primary residence.

Upon execution of that warrant, the police found a plethora of artworks, many of

which were instantly identifiable to the officers as stolen. The officers called in other experts and eventually 169 objects not on the warrant were seized. Of the 169 objects seized without a warrant, testimony was received regarding only approximately 25 of them. The only testimony received on the remaining objects was that the police thought they were probably stolen because of the 25 objects they knew to be stolen. The 25 objects that testimony was received on were admitted into evidence. The remainder of the objects were suppressed. The opinion of the court stated that "[w]hile I do not suggest that the officers involved here, or any officers for that matter, close their eyes to situations where their suspicions of criminal activity are unverified, there are other safeguards such as photographing the premises and then obtaining a second search warrant which can protect against general

exploratory searches and wholesale seizures condemned by courts and the warrant clause of the Constitution. Emphasis supplied. U.S. v. Waxman, supra.

Could the police in the instant case have done any more than follow the explicit directions set down in Waxman? The police were attempting to preserve possible evidence and ensure that it was not wrongfully disposed of and at the same time were seeking in the least obtrusive way possible to perform a complete investigation into possible wrongdoing. The police, pursuant to a warrant, had a right to be in Appellant's home. Once the police were in the house, Appellant lost all right to privacy to any items in plain-view and any items legitimately found while searching those things listed in the warrant. The Horton court stated that if an article is already in plain view, neither its

observation nor its seizure would involve any invasion of privacy for Fourth Amendment purposes. Horton v. California, 110 S. Ct. 2301 (1990).

The mere taking of pictures deprived Appellant of none of his possessory rights in any items he lawfully owned.

For the above stated reasons, it is respectfully requested that cert be denied as to this issue. There seems to be no disagreements as to this issue in the district courts of the federal system nor does justice require a rendering of an opinion of this court on this issue.

CONCLUSION

For all of the above and foregoing reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

HARRY N. GORDON
District Attorney
Western Judicial Circuit
325 E. Washington Street
Room 500
Athens, Georgia 30601

APPENDIX

EXHIBIT A

Georgia, Wilkes County

CITY OF Washington, GEORGIA

Affidavit and Complaint for Search Warrant Before Robert L. Stevens, Judge of Superior Court (Name and Title of Person before whom affidavit is made)

The undersigned being duly sworn deposes and on oath says that he has reason and probable cause to believe that certain property, namely rare maps, rare books, rare plates and business records between art dealers and Robert M. "Skeet" Willingham indicating sales of University of Georgia property, is now being unlawfully concealed in an upon the premises known as 405 South Alexander Avenue, and a 1985 Blue Mercedes Benz Model 190E, Tag "Books", located in the City of Washington, Wilkes County, Georgia, in the custody or control of Robert M. "Skeet" Willingham and that deponent does

verily believe and has probable cause to believe from facts within his knowledge as set out herein that the property heretofore described is kept and concealed in and upon said premises in violation of the laws of the State of Georgia and for the purpose of violating the same. The facts tending to establish affiant's reason for belief and probable cause for belief are as follows: See Attached Affidavit. This affidavit and complaint is made for the purpose of authorizing the issuance of a search warrant for the person or premises described above.

Sworn to before me and subscribed in my presence this 22 day of December, 1986.

Mitchell F. Jones

Signature of Affiant

Robert L. Stevens

Signature and Title of
Officer before whom
affidavit is made

Georgia, Wilkes County

To Mitchell F. Jones (Name of Peace Officer making complaint) and to all and singular the Peace Officers of the State of Georgia, "GREETING":

The foregoing affidavit and complaint having been duly made before me and the same, together with the facts submitted under oath contained therein having satisfied me that there is probable cause to believe that the property described therein is being unlawfully concealed in and upon the premises described therein of rare maps, rare books, rare plates and business records between art dealers and Robert M. "Skeet" Willingham indicating sales of University of Georgia property.

YOU ARE HEREBY COMMANDED to enter and search said described premises, serving this warrant, and if the property described or

any portion of it be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within 10 days of this date or some other judicial officer, as required by law.

Given under my hand and seal this 22nd day of December, 1986, at 10:30 O'clock, A.M..

Robert L. Stevens

Signature and Title of Officer Issuing Search Warrant

AFFIDAVIT FOR A TOOMBS JUDICIAL CIRCUIT (WILKES COUNTY) SEARCH WARRANT FOR THE ENTIRE PREMISES OF 405 SOUTH ALEXANDER AVENUE, WASHINGTON, WILKES COUNTY, GEORGIA BEING A TWO STORY WHITE FRAME HOUSE, WHITE PICKET FENCE AROUND THE HOUSE, AND GARAGE IN THE BACK, THE HOUSE IS OCCUPIED BY ROBERT M. "SKEET" WILLINGHAM, JR. THE VEHICLE OWNED BY WILLINGHAM, JR. IS A 1985 BLUE MERCEDES BENZ MODEL 190E LICENSE NUMBER GEORGIA 1986 "BOOKS".

CONFIRMATION OF THE ABOVE WAS MADE BY PERSONALLY CONTACTING WILLINGHAM, JR. AT HIS RESIDENCE, SEEING LETTERHEAD STATIONERY WITH HIS NAME AND ADDRESS (405 SOUTH ALEXANDER, WASHINGTON, GA), CHECKING HIS FORMER EMPLOYER'S RECORDS. THE VEHICLE DESCRIBED WAS VERIFIED AS BEING WILLINGHAM'S AFTER CHECKING UNIVERSITY OF GEORGIA PARKING SERVICES RECORDS.

The University of Georgia Police Department is currently investigating the

theft of rare books, rare manuscripts and rare prints from the University of Georgia library.

In October 1985, the UGA Police Department was notified that a one-of-a-kind letter written by Nathaniel Green [sic] in 1783, was missing from the library and an art dealer in Philadelphia, PA had the letter. The art dealer was concerned that the letter was stolen and wanted to get the letter back to the University of Georgia library. The letter was returned to the University of Georgia library on October 14, 1985.

The investigation revealed that several art dealers handled the manuscript prior to the library being notified by the art dealer in Philadelphia. A contact of the art dealers revealed that a dealer by the name of Harvey Dan Abrams of Atlanta, GA had purchased the manuscript from an unknown

person for $200.00. Mr. Abrams in turn began the chain as the investigators know it. Mr. Abrams had no records of the sale nor could he give investigators information as to who the seller was, where he came from, or his destination. The library did not wish to pursue the incident at that time because the manuscript was returned.

In July 1986, the University of Georgia Police Department was again notified by the University of Georgia library that a rare map of South Carolina was missing. Police investigators began to interview employees about the theft and on August 8, 1986 the map reappeared. The library at that time began an inventory of the maps they had in their possession and discovered that many of the maps were missing. Of great concern was the theft of twenty-eight (28) maps from a collection once owned by President George Washington. Library officials learned that

an art dealer in New York, New York, W. Graham Arader, III, had for sale twelve (12) maps from an identical collection. According to records, the University of Georgia and the Boston Public Library have the only sets of these maps. A check was made and it was confirmed that the Boston Library had possession of their maps.

On October 6, 1986, W. Graham Arader, III was contacted by investigators and he had explained that poor records and did not know who he could have purchased the maps from but he did mention he could have purchased the maps from an employee of the University of Georgia library by the name of Robert M. "Skeet" Willingham, Jr. Arader stated that he had purchased maps from Willingham, Jr. and Willingham, Jr. did not want any receipts. Arader also said that Willingham, Jr. sold an eight (8) volume set of Redoute's Lillies [sic] to Dr. Lawrence

Alligood of Carrollton, Georgia several years ago.

On October 6, 1986, police investigators were notified that the eight (8) volume set of Redoute's Lillies [sic] were missing from the University of Georgia library.

On October 15, 1986, Mr. Robert M. "Skeet" Willingham, Jr. was interviewed by police investigators. Mr. WIllingham, Jr. admitted selling some maps to Arader, but could not say as to what maps he did sell. Willingham alos said he had sold an eight (8) volume set of Redoute's Lillies [sic] to a Dr. Lawrence Alligood several years ago. Willingham said he used Harvey Dan Abrams as the go-between for the sale. When asked where he got the eight (8) volume set Willingham, Jr. replied that he received them from the estate of a deceased relation, but he cold not prove it.

On December 12, 1986, Dr. Lawrence Alligood was interviewed by police investigators concerning his purchase of an eight (8) volume set of Redoute's Lillies [sic]. Dr. Alligood said he did purchase the eight (8) volume set from Willingham, Jr. and that Harvey Dean Abrans had been the go-between in the sale. Dr. Alligood sold six (6) volumes of the set, but kept volumes one (1) and two (2). Volumes one (1) and two (2) were at his home. The two volumes were taken by investigators so that an analysis could be made as to the ownership of the books.

The ownership of the University of Georgia's copy of Redoute's Lillies [sic] could be proven by looking on the title page of volume one (1). Between 1802 and 1816, 60 copies of Redoute's Lillies [sic] were printed. The number of copies that exist today is unknown. The University of

Georgia copy is unique to all others because an employee of the University, Henry Jackson, signed his name to the title page of Volume one (1). It is believed that Jackson signed his name to the title page prior to 1853. University of Georgia records indicate that the signature would be present. Police investigators were unable to see the signature with the naked eye. The two volumes were taken to the State of Georgia Crime Lab on December 15, 1986 and on December 16, 1986, the laboratory reported that Jackson's signature was indeed in the right hand corner of the title page of volume one (1).

On December 16, 1986, Harvey Dan Abrams was interviewed by police investigators. Abrams changed his story as to how he received the Nathaniel Greene manuscript. Abrams admitted that he did not did not tell investigators the truth in October, 1985.

Abrams admitted that he received the Nathaniel Greene letter from Robert M. "Skeet" Willingham, Jr. Abrams admitted selling the eight (8) volume set of Redoute's Lillies [sic] for Robert M. "Skeet" Willingham to Dr. Lawrence Alligood. Abrams told investigators that he was told by Willingham, Jr. that the set of Redoute's Lillies [sic] had been in his family and became his when a relative passed away. During the interview of Abrams, an associate of Abrams, Gary Eugene Duda, gave to investigators a print of an Indian Chief. The print, John Ross - Indian Chief, is missing from Volume III (3) of a three (3) volume set of books owned by the University of Georgia. The set of books is entitled Indian Tribes of North America, McKenney and Hall, ed. 1842.

As of Wednesday, December 17, 1986, police investigators were given an inventory

of missing maps, plates and books. It is known that twenty-eight (28) maps valued at approximately $140,000.00, approximately eight hundred fifty-three (853) prints valued at approximately $853,000.00 are missing from the University of Georgia library.

It is known that Robert M. "Skeet" Willingham, Jr. sells and purchases rare books, manuscripts, philatelic materials and library properties. Three people, Harvey Dan Abrams, Dr. Lawrence Alligood, and Gary Eugene Duda say that they have received property from Willingham, Jr. Two pieces of property, Nathaniel Greene's letter and volume 1 of Redoute's Lillies [sic] have been positively identified as belonging to the University of Georgia. The print of John Ross is currently being analyzed at the State of Georgia Crime Lab. Robert "Skeet" Willingham, Jr. admitted to police

investigators that he did sell to Dr. Lawrence Alligood an eight (8) volume set of Redoute's Lillies [sic].

For the above reasons I have probable cause to believe there is now contained within the premises or vehicle or person of Robert M. "Skeet" Willingham, Jr. the following property belonging to the University of Georgia. (See the four (4) attached sheets.) There is also probable cause to believe that there exists withing [sic] the premises or vehicle or person of Rober [sic] M. "Skeet" Willingham, Jr. business documents and correspondence between Willingham, Jr. and art dealers involving sales of rare manuscripts, rare books, rarer maps and rare prints belonging to the University of Georgia.

Afficant Mitchell F. Jones

Sworn to and subscribed before me this day, Dec. 22nd, 1986.

Judge Robert L. Stevens

Superior Court

RARE BOOKS MISSING FROM THE HARGRETT

RARE BOOK AND MANUSCRIPT LIBRARY

AS OF DECEMBER 16, 1986

1. BLUME, KARL LUDWIG

   Flora javae nec non

   Insularum Adjacentium

   Auctore Carolo Ludovico

   Blume 1828

   3 volumes (238 plates total)

2. LACEPEDE, BERNARD GERMAIN ETIENNE

   LA MENAGERIE DU MUSEUM

   National D'Histoire Naturelle

   . . . . . Paris, 1801 (information of

   number of volumes and plates destroyed)

3. REDOUTE, PIERRE JOSEPH

   Les Mois 18--

   12 color plates (very rare)

4. REGNAULT, NICOLAS FRANCOIS

   La Botanique muse a la Portee de Tout Le

   Monde

. 1774-1784

3 volumes (472 plates total)

5. VENTENAT, ETIENNE PIERRE

Jardin de la Malmaison

. . . . . Paris, 1803-1804

2 volumes (120 plates -

plates by Redoute)

FULL COLOR PLATES

1. BUFFALO HUNT
2. OPOTHLE YOHOLO - A Creek Chief
3. MENAWA - A Creek Warrior
4. JOHN RIDGE - A Cherokee Chief
5. SELocta - A Creek Chief
6. ASSEOLA - A Seminole Leader
7. THE CHIPPEWAY WIDOW
8. MICANOPY - A Seminole Chief
9. Mistipee
10. POCAHONTAS - The Princess who rescued Captain Smith
11. LEDAGIE - A Creek Chief

* Note: All plates are missing from Indian Tribes of North America (Vols 2 & 3) - McKenney & Hall, ed. - 1842

MAPS MISSING FROM HARGRETT RARE BOOK AND MANUSCRIPT LIBRARY AS OF DECEMBER 16, 1986

All of the following items are from an Atlas (1776) originally bound:

1. PROVINCE OF QUEBEC - Robert Sayer, n.d.
2. PLAN OF QUEBEC - E. Oakley, n.d.
3. AN EXACT CHART OF THE RIVER OF ST. LAWRENCE - Thomas Jefferys
4. A CHART OF THE GULF OF ST. LAWRENCE - Sayer & Bennett
5. A GENERAL CHART OF THE ISLAND OF NEWFOUNDLAND - Sayer & Bennett
6. A GENERAL CHART OF THE BANKS OF NEWFOUNDLAND - Sayer & Bennett
7. A MAP OF NOVA SCOTIA - Montresor (1768)
8. A PLAN OF THE ISLAND OF ST JOHN - Capt. Holland
9. A GENERAL MAp of the british colonies - C. Bowles

10. A MAP OF THE MOST INHABITED PART OF NEW ENGLAND - T. Jefferys (1774)

11. A PLAN OF BOSTON

12. A TOPOGRAPHICAL CHART OF THE BAY OF NARRAGANSETT - Charles Blaskowitz (1777)

13. A PLAN OF THE TOWN OF NEWPORT - Charles Blaskowitz (1777)

14. A SURVEY OF LAKE CHAMPLAIN - William Brassier

15. A PLAN OF NEW YORK ISLAND - William Faden (1776)

16. A PLAN OF THE OPERATIONS OF THE KING'S ARMY . . . . IN NEW YORK AND EAST NEW JERSEY - C. J. Sauthier (1777)

17. THE PROVINCE OF NEW JERSEY - W. Faden (1777)

18. A PLAN OF THE CITY OF NEW YORK - J. Montresor (1775)

19. PLAN OF THE OPERATIONS OF GENERAL WASHINGTON . . . IN NEW JERSEY - W. Faden

20. A MAP OF PENNSYLVANIA - Sayer & Bennett (1775)

21. A PLAN OF THE CITY AND ENVIRONS OF PHILADELPHIA - W. Faden (1777)

22. A PLAN OF THE CITY OF PHILADELPHIA - B. Easburn

23. A CHART OF DELAWARE BAY - J. Fisher

24. A MAP OF NORTH (?) CAROLINA AND PART OF GEORGIA - W. DeBrahm

25. PLAN OF THE ATTACK OF FORT SULLIVAN - W. Faden

26. A VIEW OF SAVANNAH - P. Gordon

27. PLAN OF AMELIA ISLAND IN EAST FLORIDA. A CHART OF THE ENTRANCE INTO ST. MARY'S RIVER. A CHART OF THE MOUTH OF THE NASSAU RIVER - Will Fuller

28. COURSE OF THE MISSISSIPPI RIVER - J. Ross

EXHIBIT B

AFFADAVIT [sic] FOR A TOOMBS JUDICIAL CIRCUIT (WILKES COUNTY) SEARCH WARRANT FOR THE ENTIRE PREMISES OF 405 SOUTH ALEXANDER AVENUE, WASHINGTON, WILKES COUNTY, GEORGIA BEING A TWO STORY WHITE FRAME HOUSE, WHITE PICKET FENCE AROUND THE HOUSE, AND GARAGE IN THE BACK. THE HOUSE IS OCCUPIED BY ROBERT M. "SKEET" WILLINGHAM, JR. THE VEHICLE OWNED BY WILLINGHAM, JR. IS A 1985 BLUE MERCEDES BENZ MODEL 190E LICENSE NUMBER GEORGIA 1986 "BOOKS".

CONFIRMATION OF THE ABOVE WAS MADE BY PERSONALLY CONTACTING WILLINGHAM, JR. AT HIS RESIDENCE, SEEING LETTERHEAD STATIONERY WITH HIS NAME AND ADDRESS (405 SOUTH ALEXANDER, WASHINGTON, GEORGIA), CHECKING HIS FORMER EMPLOYER'S RECORDS. THE VEHICLE DESCRIBED AS BEING WILLINGHAM'S AFTER CHECKING UNIVERSITY OF GEORGIA PARKING SERVICES RECORDS. HAVING EXECUTED A SEARCH WARRANT AT THIS RESIDENCE ON DECEMBER 22, 1986.

On Monday, December 22, 1986, University of Georgia police officers executed a search warrant at the residence of Robert M. "Skeet" Willingham, Jr. of Washington, Georgia. The purpose of the search warrant was to hopefully locate property belonging to the University of Georgia Library. Several pieces of property were taken from the Willingham residence during the search and one item has been identified as belonging to the University of Georgia. Many maps and prints were seen by investigators but were not taken during the search because it was not known if these items were missing from the University of Georgia Library. In particular a 1757 DeBrahm's map of Georgia and South Carolina was seen, an Eleazer Early map of the state of Georgia, and an Abbot's print entitled "Chestnut Butterfly" were seen by investigators but were not taken.

The University of Georgia has on record as owning five copies of the DeBrahm's map. The records indicate that one copy is black and white and the remaining copies are done in color. The University is currently missing the black and white copy and two copies done in color. The whereabouts of the black and white copy is unknown at this time. It is known that Willingham received, in March 1986, a check for the amount of $2,500.00 from Harvey Dan Abrams. Abrams had sold for Willingham a DeBrahm's map of the same year as the ones owned by the University. Abrams was told by Willingham that this DeBrahm's map came from a reputable antique dealer in Charleston, South Carolina. The investigation revealed that the antique dealer had not heard of Wilingham nor had they handled a Debrahm's map in many years. The Debrahm's map sold by Abrams was seen by University of Georgia

investigators at the house of the purchaser. The map ia a large folded map similar to being in a case. One of the missing DeBrahm maps is also folded and similar to being in a case. A Debrahm's map done in color was seen by investigators in the home of Willingham.

The University of Georgia has on record as having two Eleazer Early maps of Georgia. The University of Georgia now has but one Eleazer Early map of Georgia. University investigators saw an Eleazer Early map of Georgia in the home of Willingham during the execution of a search warrant on Monday, December 22, 1986.

The University of Georgia has on record (library cards) as owning two sets of Abbot's The Natural History of the Rarer Lepidopterous Insects of Georgia. The books are dated 1797 and come in sets of two volumes. During the execution of the search

warrant in the Willingham residence on Monday, December 22, 1986, a print was seen by University investigators. The print was of brown butterflies. At the time of the search, it was not known if this print belonged to the University of Georgia. Recently, the University was asked by another library to loan a set of Abbot's to them for an exhibition. The books were found and checked for completeness. It was discovered that two prints were missing from volume one of the Abbot's, "The Chestnut Butterfly" and "The Green Swallowtailed Emperor" were both missing. "The Chestnut Butterfly" was seen in the Willingham residence.

It is known that Robert M. "Skeet" Willingham, Jr. has sold property belonging to the University of Georgia. It is also known that property belonging to the University of Georgia was found in

Willingham's residence during the execution of a search warrant on Monday, December 22, 1986. It is also known that Willingham was employed by the University of Georgia Library and did have access to all the property mentioned.

For the above reasons, I have probable cause to believe there is now contained within the premises or vehicle or person of Robert M. "Skeet" Willingham ,Jr. the above mentioned property belonging to the University of Georgia.

Affican Mitchell F. Jones

Sworn to and subscribed before me this day, Feb. 2, 1987.

Judge E. Purnell Davis

Judge Superior Court

Toombs Judicial Circuit

EXHIBIT C

CONSENT TO SEARCH

I, Robert M. Willingham, Jr., having been advised of my right to require a search warrant before a search is made of the (premises) under my custody or control and of my right to refuse to consent to such a search without a warrant and of my right to withdraw any consent to search at any time, hereby authorize Lt. Mitchell F. Jones and other officers he may designat to assist him, to conduct a complete search of the premises located at 405 South Alexander Avenue Washington, GA, and I authorize said officers to take from said (premises) any documents, items of property or other evidence of a crime upon a receipt from said officers. I have been advised that said search is being conducted in connection with an investigation of a crime of Theft by

Taking. I have not been promised any reward of any type. I have not been threatened in any manner. I freely and voluntarily give my consent to conduct said search to the above officer with full understanding of my rights and my actions.

This 3rd day of February, 1987.

Robert M. Willingham, Jr.

(Signature)

Witnesses:

Randy L. Young

Michael W. Leonard

EXHIBIT D

Georgia, WILKES County

CITY OF Washington, GEORGIA

Before Robert L. Stevens, Judge of Superior Court, (Name and Title of Person before whom affidavit is made)

The undersigned being duly sworn deposes and on oath says that he has reason and probable cause to believe that certain property, namely maps (see attached list). is now being unlawfully concealed in and upon the premises known as 405 South Alexander Avenue, and a blue Mercedes Benz Model 190E, Tag "Books". located in the City of Washington, Wilkes County, Georgia, in the custody of Robert M. "Skeet" Willingham, Jr. and that deponent does verily believe and has probable cause to believe from facts within his knowledge as set out herein that the property heretofore described is kept and concealed in and upon said premises in

violation of the laws of the State of Georgia and for the purpose of violating the same. The facts tending to establish affiant's reason for belief and probable cause for belief are as follows: See attached affadavit [sic]. This affidavit and complaint is made for the purpose of authorizing the issuance of a search warrant for the person or premises described above. Sworn to before me and subscribed in my presence this 17th day of February, 1987.

Michael F. Jones

Signature of Affiant

Robert L. Stevens

Signature and Title of
Officer before whom
affidavit is made
Judge of Superior Court
of Toombs Circuit

GEORGIA, CLARKE COUNTY

To Mitchell F. Jones (Name of Peace Officer making complaint) and to all and singular the Peace Officers of the State of Georgia, "GREETING":

The foregoing affidavit and complaint having been duly made before me and the same, together with the facts submitted under oath contained therein having satisfied me that there is probable cause to believe that the property described therein is being unlawfully concealed in an upon the premises described therein of See attached affidavit.

YOU ARE HEREBY COMMANDED to enter and search said described premises, serving this warrant, and if the property described or any portion of it be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the

property before me within 10 days of this date or some other judicial officer, as required by law.

Given under my hand and seal this 17th, day of February, 1987 at 5:00 O'clock, P.M.

Robert L. Stevens

Signature and Title of Officer Issuing Search Warrant

Judge of Superior Court

AFFADAVIT [sic] FOR A TOOMBS JUDICIAL CIRCUIT (WILKES COUNTY) SEARCH WARRANT FOR THE ENTIRE PREMISES OF 405 SOUTH ALEXANDER AVENUE, WASHINGTON, WILKES COUNTY, GEORGIA BEING A TWO STORY WHITE FRAME HOUSE, WHITE PICKET FENCE AROUND THE HOUSE, AND GARAGE IN THE BACK. THE HOUSE IS OCCUPIED BY ROBERT M. "SKEET" WILLINGHAM, JR. THE VEHICLE OWNED BY WILLINGHAM, JR. IS A 1985 BLUE MERCEDES BENZ MODEL 190E LICENSE NUMBER GEORGIA 1986 "BOOKS".

CONFIRMATION OF THE ABOVE WAS MADE BY PERSONALLY CONTACTING WILLINGHAM, JR. AT HIS RESIDENCE, SEEING LETTERHEAD STATIONERY WITH HIS NAME AND ADDRESS (405 SOUTH ALEXANDER, WASHINGTON, GEORGIA), CHECKING HIS FORMER EMPLOYER'S RECORDS. THE VEHICLE DESCRIBED WAS VERIFIED AS BEING WILLINGHAM'S AFTER CHECKING UNIVERSITY OF GEORGIA PARKING SERVICES RECORDS. HAVING EXECUTED SEARCH WARRANTS AT THIS RESIDENCE ON DECEMBER 22, 1986 AND FEBRUARY 2, 1987.

On Monday, December 22, 1987 and Monday, February 2, 1987, University of Georgia police officers executed search warrants at the home of Robert M. "Skeet" Willingham, Jr. On Tuesday, February 3, 1987, University of Georgia police officers received permission from Willingham, Jr. for a consent of search of his home. A total of six (6) pieces of property were taken from the home of Willingham, Jr. during the three searches by University of Georgia police officers. Of the six (6) pieces of property taken, four (4) maps have been positively identified as being the property of the University of Georgia.

Photographs taken during the search conducted on February 2, 1987 were developed and studied beginning February 5, 1987. During the week of February 9 - 13, 1987, library officials notified University of Georgia investigators that maps seen in the

Willingham, Jr. home were possibly maps missing from the University of Georgia Library. Library records indicate the University of Georgia Library should have copies or multiple copies of ten (10) specific maps seen in the Willingham, Jr. home on Monday, February 2, 1987. Inventories completed on the ten (10) specific maps indicate the University of Georgia Library is currently missing one or more copies of each of the ten (10) specific maps.

It is known that Robert M. "Skeet" Willingham, Jr. worked at the University of Georgia Library, has sold material belonging to the University of Georgia Library and property found in his home has been identified as belonging to the University of Georgia Library.

For the above reasons, I have probable cause to believe there is now contained

within the premises or vehicle or person of Robert M. "Skeet" Willingham, Jr. the following property. (See attached list of maps).

Affican Mitchell T. Jones

Sworn to and subscribed before me this day, February 17th 1987

Judge Robert L. Stevens

J.S.C.T.C.

1. Map of the States of Alabama and Georgia, engraved and printed by Fenner, Sears and Co., London; published October 15, 1831 by I.T. Hinton, Simpkin and Marshall.

* The University has on record as having five (5) copies, but three (3) are missing.

2. A new and general map of the Southern Dominions belonging to the United States of America, viz: North Carolina, South Carolina, and Georgia: with the bordering Indian Countries and the Spanish Possessions of Louisiana and Florida; London, published by Laurie & Whittle, no. 53, Fleet Street, as the act directs. May 12, 1794.

* The University has on record as having eight (8) copies, but six (6) are missing.

3. A map of the states of Virginia, North Carolina and Georgia; comprehending the

Spanish provinces of east and west Florida, exhibiting the boundaries as fixed by the late Treaty of Peace between the United States and the Spanish dominions - Compiled from late surveys and observation by Joseph Purcell, New Haven, 1788?

* The University has on record as having four (4) copies, but three (3) are missing.

4. Georgia from the latest authorites. W. Barker, sculp. Philadelphia, 1794 - 1795. Engraved for Carey's American edition of Guthries geography.

* The University has on record as having seven (7) copies, but four (4) are missing.

5. A new map of Georgia with its roads and distances by H.S. Turner. Engraved by J. Knight, Philadelphia, Carey and Hart, 1839.

* The University has on record as having five (5) copies, but one (1) is missing.

6. A map of such parts of Georgia and South Carolina as tend to illustrate the process and operations of the British Army. By Thomas Kitchin. published by R. Baldwin at the Rose Pater Noster Row for the London Magazine, May 1780.

* The University has on record as having three (3) copies, but two (2) copies ar [sic] missing.

7. A new map of Georgia, with a part of Carolina, Florida and Louisiana. Drawn from original draughts, assisted by the most approved maps and charts.. London 1748. Collected by Emanuel Bowen.

* The University has on record as having two (2) copies, but one (1) is missing.

8. Southern section of the United States including Florida by John Melish,

1816. Stockholm, 1824.

* The University has on record as having four (4) copies, but three (3) are missing.

9. A new map of part of the United States of North American , containing the Carolinas and Georgia, also the Floridas and part of the Bahama Islands and c. from the latest authorities by John Carey, engraver. 1806. London: Published by J. Carey Engraver and map-seller 181 Strand Feb. 1st, 1806.

* The University has on record as having five (5) copies, but three (3) are missing.

10. Map depicting Salzburg Colony in America (A map of the county of Savannah).

* The University has on record as having two (2) copies, but one (1) is missing.

PROPERTY SEIZED:

1.) Map of the States of Alabama and Georgia, engraved and printed by Fenner, Sears, and Co., London: published October 15, 1831, by I. T. Hinton, Simpkin and Marshall. (Framed).

2.) A New and General Map of the Southern Dominions belonging to the United States of America, viz: North Carolina, South Carolina, and Georgia: with the bordering Indian Countries and the Spanish Possessions of Louisiana and Florida; London, 1794, Laurie and Whittle. (Framed)

3.) A Map of the States of Virginia, North Carolina and Georgia; Purcell. New Haven. 1788 (Framed)

4.) Georgia from the latest authorities, W. Barker, sculp. Engraved for Carey's American edition of Guthries

geography. With "1795" written in pencil on the front side (lower right hand corner) and "1927 25" written in pencil on the front side (lower right hand corner). (Framed).

5.) A New Map of Georgia with its roads and distances by H.S. Tanner. Engraved by J. Knight, Philadelphia, 1839. (Framed).

6.) A Map of Such Parts of Georgia and South Carolina as tend to illustrate the progrefs and operations of the British Army. ByThomas Kitchin, published by R. aldwin at the Rose Pater Noster Row for the London Magazine, may 1780. (Framed).

7.) A New Map of Georgia, with a part of Carolina, Florida and Louisiana drawn for original draughts, assisted by the most approved maps and charts. Vol. II P, 323, Collected by Eman, Bowen,

geographer to his majesty, (Framed)

8.) Southern Section of the United States including Florida by John Melish, 1816. (Framed).

9.) A New Map of the United States of North America, containing the Carolinas and Georgia, also the Floridas [sic] and part of the Bahama Islands and C. from the latest authorities by John Carey Engraver, Published by J. Carey engraver and map seller. 181 Strand Feb. 1st 1806. (Framed).

10.) Map of the County of Savannah, (Dieu et mon Droit) (Framed)

11.) A New and Accurate Map of the Province of Georgia in North America, "1780" written in pencil by the in. (Framed).

EXHIBIT E

Georgia, WILKES County

Affidavit and Complaint for Search Warrant

City of Washington, GEORGIA

Before Robert Stevens, Superior Court, Toombs Judicial Circuit (Name and Title of Person before whom affidavit is made)

The undersigned being duly sworn deposes and on oath says that he has reason and probable cause to believe that certain property, namely No. 1 Friday, October 13, 1836 edition of the "Hancock Advertisor", print of "Stone Mountain, Georgia" by Cheek, a cancelled stock certificate from the Georgia Railroad and Banking Company dated 1842.

is now being unlawfully concealed in and upon the premises known as 405 South Alexander Avenue and a blue Mercedes Benz Model 190E, Tag "Books".

located in the City of Washington, Wilkes

County, Georgia, in the custody or control of Robert M. "Skeet" Willingham, Jr. and that deponent does verily believe and has probable cause to believe from facts within his knowledge as set out herein that the property heretofore described is kept and concealed in and upon said premises in violation of the laws of the State of Georgia and for the purpose of violating the same. The facts tending to establish affiant's reason for belief and probable cause for belief are as follows: see attached affidavit.

This affidavit and complaint is made for the purpose of authorizing the issuance of a search warrant for the person or premises described above.

Sworn to before me and subscribed in my presence this 30 day of March, 19 87.

Chuck Horton

Signature of Affiant

Robert L. Stevens

Signature and Title of Officer before whom affidavit is made

Judge of Superior Court

GEORGIA, CLARKE COUNTY

To Chuck Horton (Name of Peace Officer making complaint) and to all and singular the Peace Officers of the State of Georgia, "GREETING":

The foregoing affidavit and complaint having been duly made before me and the same, together with the facts submitted under oath contained therein having satisfied me that there is probable cause to believe that the property described theein is being unlawfully concealed in and upon the premises described therein of see attached affidavit

YOU ARE HEREBY COMMANDED to enter and search said described premises, serving this

warrant, and if the property described or any portion of it be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a writen inventory of the property seized and return this warrant and bring the property before me within 10 days of this date or some other judicial officer, as required by law.

Given under my hand and seal this 30th day of March, 19 87.

at 2:15 O'clock p.m.

Robert L. Stevens

Signature and Title of Officer Issuing Search Warrant

Judge of Superior Court

Filed in office this 3rd day of April 19 87

Karen F. Armour

(DEPUTY) CLERK OF SUPERIOR COURT, WILKES COUNTY, GA

AFFIDAVIT FOR A TOOMBS JUDICIAL CIRCUIT (WILKES COUNTY) SEARCH WARRANT FOR THE ENTIRE PREMISES OF 405 SOUTH ALEXANDER AVENUE, WASHINGTON, WILKES COUNTY, GEORGIA BEING A TWO STORY WHITE FRAME HOUSE, WHITE PICKET FENCE AROUND THE HOUSE, AND GARAGE IN THE BACK. THE HOUSE IS OCCUPIED BY ROBERT M. "SKEET" WILLINGHAM, JR. THE VEHICLE OWNED BY WILLINGHAM, JR. IS A 1985 BLUE MERCEDES BENZ MODEL 190E LICENSE NUMBER GEORGIA 1986 "BOOKS".

CONFIRMATION OF THE ABOVE WAS MADE BY PERSONALLY CONTACTING WILLINGHAM, JR. AT HIS RESIDENCE, SEEING LETTERHEAD STATIONERY WITH HIS NAME AND ADDRESS (405 SOUTH ALEXANDER, WASHINGTON, GEORGIA), AND CHECKING HIS FORMER EMPLOYER'S RECORDS. THE VEHICLE DESCRIBED WAS VERIFIED AS BEING WILLINGHAM'S AFTER CHECKING UNIVERSITY OF GEORGIA PARKING SERVICES RECORDS. THESE THINGS WERE ALSO

CONFIRMED BY HAVING EXECUTED SEARCH WARRANTS AT THIS RESIDENCE ON DECEMBER 22, 1986, FEBRUARY 2, 1987, AND FEBRUARY 17, 1987.

On Monday, December 22, 1986, Monday, February 2, 1987, and Tuesday, February 17, 1987, University of Georgia police officers executed search warrants at 405 South Alexander Avenue, Washington, Georgia. On Tuesday, February 3, 1987, a consent search was conducted at 405 South Alexander Avenue, Washington, Georgia. 405 South Alexander Avenue, Washington, Georgia is the home of Robert M. "Skeet" Willingham, Jr. former employee of the University of Georgia Library (Special Collections).

During the four (4) previous searches, a total of seventeen (17) articles have been taken from Willingham, Jr.'s home. Of the seventeen (17) articles taken by University of Georgia Police officers, seven (7) have been positively identified as being property

belonging to the University of Georgia. The seven (7) articles identified as being University property came from the Special Collections Department.

During the execution of the second search warrant on Monday, February 2, 1987, photographs were taken by police officers. These photographs were developed and studied by library officials. On March 10, 1987, I was notified by library officials and told about three (3) items they felt should be investigated as possibly being property belonging to the University of Georgia.

The first article is the No. 1, Friday, October 13, 1826 edition of the "Hancock Advertisor". Library officials checked microfilm records and discovered by checking the photographs taken inside the home of Willingham, Jr. that their microfilm records of the October 13 edition has the identical same markings as the original "Hancock Advertisor" found in Willingham, Jr.'s home.

The second article is a print of "Stone Mountain, Georgia". Library officials discovered that they had obtained an identical print during the purchase of the W.W. DeRenne collection in the 1930s. It was further discovered that library officals photographed this print at some point in the past and kept a photograph on file. Upon inspection of the file copy of the print and the photograph taken of the print in Willingham, Jr.'s home, it is easily seen by the naked eye that there are marks on both photographs that are identical.

The third article is a Georgia Railroad and Banking Company Stock Certificate dated April 15, 1845. Library officials discovered the library purchased a collection of similar stock certificates from an antique dealer on April 2, 1958. The collection purchased by the library in 1968 consisted of twenty-nine (29) pieces.

Now there are but twenty-eight (28) pieces remaining. All pieces purchased were 1840 - 1843 Georgia Railroad and Banking Company stock certificates. All pieces purchased by the library have "cancelled" written on the left side. The photograph of the stock certificate taken in Willingham, Jr.'s home also has "cancelled" written on the left side. The handwriting on the University's pieces appears to be identical to the handwriting on the stock certificate photographed in Willingham, Jr.'s home.

For the above reasons, I have probable cause to believe there is now contained within the premises or vehicle or on the person of Robert M. "Skeet" Willingham, Jr. an October 13, 1826 edition of the Hancock Advertisor, a print of Stone Mountain, Georgia, and a cancelled stock certificate from the Georgia Railroad and Banking Company belonging to the University of Georgia.

Affiant Chuck Horton

Sworn to and subscribed before me this day, March 30, 1987

Judge Robert L. Stevens

Judge of Superior Court

CERTIFICATE OF SERVICE

I, Harry N. Gordon, hereby certify that I have served three copies of the foregoing Opposition to Petition for Writ of Certiorari on Ernie DePascale, counsel for Robert M. "Skeet" Willingham, Jr., at Forston, Bentley & Griffin, P.O. Box 1744, Athens, Georgia 30613, by depositing the same in the United States mail with proper postage affixed thereto.

This 24th day of October, 1991.

Harry N. Gordon
District Attorney